Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1974

No. 73-2024

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKEY, Individually and on behalf of all other persons similarly situated, KATHERINE HARRIS, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC., HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC., ROCHESTER HOME BUILDERS ASSOCIATION, INC.,

Petitioners,

vs

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Respondents.

— *over* —

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(493)

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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Petitioners, Robert Warth, Lynn Reichert, Victor Vinkey, Katherine Harris, Andelino Ortiz, Clara Broadnax, Angelea Reyes, Rosa Sinkler, individually and on behalf of all other persons similarly situated, Metro-Act of Rochester, Inc., Housing Council in the Monroe County Area, Inc., and Rochester Home Builders Associations, Inc., pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled matter on April 18, 1974.

Opinion Below

The judgment of the Court of Appeals for the Second Circuit, which was entered on April 18, 1974, affirmed the District Court's dismissal of the complaint and the denial of a motion to intervene on the ground that plaintiffs and intervenors lack standing. The opinion is attached hereto as Appendix A. The opinion of the District Court for the Western District of New York, dated December 27, 1972, is attached hereto as Appendix B and is not officially reported.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on April 18, 1974, and this Petition for Certiorari was filed within ninety (90) days from that date. Jurisdiction is conferred upon this Court by 28 U.S.C. §1254(1).

Question Presented

Whether individual and organizational plaintiffs have standing to challenge defendants' racially discriminatory and exclusionary zoning ordinance, practices, and policies which deprive plaintiffs of constitutional and statutory rights and cause them to suffer economic damage and loss of the social benefits of living in an integrated community.

Constitutional and Statutory Provisions

This petition involves the First, Ninth and Fourteenth Amendments to the Constitution of the United States; 42 U.S.C. § 1981; 42 U.S.C. §1982; and 42 U.S.C. § 1983. (Pertinent constitutional and statutory provisions are set forth in Appendix C.)

Statement of Case

Plaintiff-petitioners are individuals and organizations which have been adversely affected both by the Town of Penfield's zoning ordinance and by defendants' administration of that law. The named plaintiffs instituted this action on behalf of themselves and a class consisting of all taxpayers residing in the contiguous City of Rochester, New York, all low and moderate income persons residing in the City, all black and Spanish-surnamed citizens residing in the City of Rochester, and all persons employed, but excluded from living, in the Town of Penfield who are, or may in the future be, affected by defendants' racially discriminatory and exclusionary zoning practices and policies. (Pertinent portions of Penfield Zoning Ordinance are set forth in Appendix D.)

Defendants-respondents are the individual members of the Zoning Board, Planning Board, and Town Board of the Town of Penfield, Monroe County, New York. Additionally, the suburban Town of Penfield, New York, which is a municipal corporation adjacent to the City of Rochester, New York, is a defendant-respondent in this action.

Petitioners[1] instituted this action alleging that defendants' zoning ordinance, as enacted and administered, excludes members of minority groups[2] and low income persons from residency in the Town of Penfield, New York. As a result of the exclusionary and discriminatory zoning ordinance, as well as defendants' implementation of that ordinance, petitioners have been, and are being, forced to suffer the deprivation of rights secured by the First, Ninth and Fourteenth Amendments to the Constitution of the United States and by the Civil Rights Act of 1866[3] and the Civil Rights Act of 1871.[4]

The District Court for the Western District of New York[5] dismissed the complaint for lack of standing and failure to state a claim upon which relief could be granted. The Second Circuit affirmed solely on the ground that petitioners lack standing. Petitioners now seek review of that determination.

For purposes of the motion to dismiss in the District Court, as well as this petition for certiorari, plaintiffs' factual allegations must be accepted as true. These allegations reveal that the purpose and effect of Penfield's zoning ordinance, as enacted and administered, are to prohibit nonwhite and nonaffluent

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[1] Petitioners WARTH, REICHERT, VINKEY, HARRIS, ORTIZ, BROADNAX, REYES, SINKLER and METRO-ACT OF ROCHESTER, INC. are the named plaintiffs on the complaint.

Petitioner, HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC. requested to be added as a party plaintiff and petitioner, ROCHESTER HOME BUILDERS ASSOCIATION, INC., sought leave to intervene. The District Court denied the requests and the Court of Appeals for the Second Circuit affirmed on the ground that these parties, as well as the named plaintiffs, lack standing. *Warth v. Seldin*, —F.2d—, —. Appendix A, infra, at 3.

[2] In 1970, only 60 of the 23,782 persons residing in Penfield were black. See Affidavit of Warth, Reichert Vinkey and Harris, at paragraph 9.

[3] 42 U.S.C. §§1981, 1982

[4] 42 U.S.C. §1983

[5] Jurisdiction is conferred upon the District Court by virtue of 28 U.S.C. §§1331 and 1343.

persons from residing in the Town of Penfield. The ordinance effectively bars the construction of any multiracial, low and moderate income housing in this suburban town. Indeed experts who have examined the ordinance have concluded:

> "Overall, the residential control aspects of the Penfield zoning ordinance must be classified as highly restrictive — essentially disallowing the construction of any new housing for low and moderate income individuals. Furthermore, in terms of public health, safety and welfare, there is no apparent justification to support the highly restrictive requirements of the residential (housing) provisions of the Penfield zoning ordinance. The zoning ordinance is not based on any current comprehensive plan and its provisions (for large lots, etc.) are neither explained nor justified within the ordinance nor within any planning document (known to these reviewers)."[6]

Defendants have accomplished this highly restrictive and exclusionary residential control by mandating such excessive requirements for house set back, lot size, lot width, minimum floor area and habitable space that in 1972, when this action was commenced, it was impossible to construct a single family dwelling in Penfield which cost less than $29,115.00 — a price far beyond the reach of most minority and low income persons. Pursuant to the zoning law, ninety-eight percent of all vacant land in the Town of Penfield is earmarked for construction of such single family housing. Only three-tenths of one percent of the vacant land is available for multi-family structures. Yet, even on this limited space, construction of multiracial, low and moderate income housing is precluded because the zoning ordinance requires low density for the apartment units and other unnecessary costs such as two parking spaces per unit and an enclosed garage for every unit. The construction of townhouses, use of mobile homes, or implementation of planned unit development are alternatives for providing adequate housing for

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[6] Affidavit of Kling, Taddiken, and Farley, at paragraph 17.

minority and low income families. However, defendants have established a series of rigid dimensional and density requirements which effectively prohibit the use of any of those alternatives.

In the posture of the instant case, the conclusion of the experts who have examined the ordinance is uncontradicted and binding upon this Court. Those experts agree that "The Penfield zoning ordinance is basically an inflexible control mechanism which has the effect of *producing economically and racially stratified housing arrangements* without apparent regard for the housing needs either of its own citizenry or for the citizenry within the larger metropolitan community." (emphasis added).[7]

Equally arbitrary and discriminatory is defendants' administration of the challenged ordinance. Defendants have continued their exclusionary practice by refusing to grant variances and building permits and by improperly using a special permit procedure. Moreover, they have failed to amend or waive certain provisions of the ordinance, including the zoning map and building specification requirements. So too, defendants refuse to either grant necessary tax abatements or cooperate with, assist and accommodate applicants for low and moderate income housing units. One member of Metro-Act of Rochester, Inc., who is a Penfield resident and was a participant in a project proposal for multiracial, low and moderate income housing, summarizes defendants' practices as 1) delaying action on proposals for inordinate periods of time; 2) denying approval of proposals for arbitrary reasons; 3) failing to provide necessary support services for low and moderate income housing units; and 4) amending the zoning ordinance to make the approval of such units virtually impossible.[8]

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[7]Id.

[8]Affidavit of Ann McNabb, at paragraph 4.

It is beyond cavil that Penfield's zoning ordinance has an exclusionary and racially discriminatory impact and that defendants' administration of the ordinance perpetuates the economically and racially stratified housing arrangements in the Town of Penfield. Yet, the Second Circuit held that plaintiffs do not have standing to challenge defendants' exclusion of nonwhite and nonaffluent families who are in desperate need of adequate housing units. In so doing, the court ignored the actual physical, economic and social injury suffered by the individual and organizational plaintiffs as a result of the zoning law and defendants' practices and policies in administering the ordinance.

Plaintiffs-petitioners, Ortiz, Broadnax, Reyes, and Sinkler, are persons of low or moderate income who have been excluded from the Town of Penfield because of their race and low income level. Plaintiff Ortiz, for example, is a Spanish-surnamed American who was dissatisfied with raising his children in the "ghetto environment" which exists in the decaying inner city section of Rochester, New York. Accordingly, in 1968 he began searching for a home in one of the surrounding suburban towns. Since at that time, and until May, 1972, he was working in the Town of Penfield, he initiated inquiries about renting or buying a home in that suburb. However, no multiracial, low and moderate income housing units were available and, thus, petitioner was forced to reside in Wayland, New York which is forty-two miles from his job in Penfield. Petitioner described his inconvenience and cost as follows:

> "Since I was unable to locate housing near my work in the Town of Penfield (employment dating from my arriving in Rochester in 1966 to May 1972) I have been forced by reason of the exclusionary practices of the Town of Penfield to reside in Wayland, New York, Town of Springwater (1971 through May 1972) forty-two miles from my work in Penfield. I worked five days a week, eight hours a day at St. Joseph's. I was at work

by 7:30 in the morning. Travel one way to the job in Penfield took at least one hour and ten minutes one way — in bad weather, the time involved one way to work was about two hours. The maximum distance from my job if I had been able to live in the Town of Penfield would have involved driving time of no more than twenty minutes to the job at St. Joseph's.

"... there was at least $2.56 involved each day in gasoline costs for my automobile or $12.80 involved in gasoline costs alone for my automobile to and from my work each week. Thus, in costs of gasoline alone, commuting to and from the job in Penfield has cost me $666.00 per year."[9]

The injury suffered by Ortiz is not limited to the burdensome commuting problems and costs. Rather, as he concluded, "Because our living environments are dictated by laws, practice and policies which prevent us from living where we might wish, we are forced, for example, to accept as a way of life, poor schools for our children, reduced job opportunities, inferior community services and added expenses of reaching employment."[10] The injury to Ortiz and his family is certainly not "too abstract, conjectural, and hypothetical to establish an Article III case or controversy."[11]

So too, plaintiffs Broadnax, Reyes and Sinkler and their respective families, have suffered actual injury as the result of defendants' exclusionary practices and policies. These plaintiffs sought housing in the Town of Penfield, but were excluded because of their race and income levels. The inner city environment in which they must reside is characterized by dilapidated, substandard housing, uncontrolled violence and insufficient or nonexistent community services. As a result of

[9] Affidavit of Andalino Ortiz, at paragraphs 13-14.

[10] Id. at paragraph 31.

[11] *Warth v. Seldin*, supra at —, Appendix A, infra at 12.

defendants' practices and policies of excluding low income persons and members of minority groups, plaintiffs are being denied their right to raise their children in an integrated environment and obtain the benefits of the improved housing conditions and community services in Penfield. One of the prime concerns of these plaintiffs is the educational disadvantages which their children are forced to suffer. Plaintiff Sinkler states:

"I have sought housing accommodations in the Rochester metropolitan area, including the Town of Penfield — all to no avail because I am a black person of low income. I would like an opportunity to live in the Town of Penfield; I believe I have a right to live in the Town of Penfield and to have access to decent housing in a decent environment.

"One of the most important reasons for my desiring to have an opportunity to live with my family in decent housing in a decent environment is my great concern that my children have an adequate education. I have already noted that I found the instruction in the public kindergarten and first grade to be so inadequate that I transferred my child to a parochial school. I understand that the public school in my area, school No. 20, has been rated among studies of Rochester City Schools as one of the lowest in terms of effective instruction of students. On the other hand, the Town of Penfield's schools rate high in studies which evaluate area schools. The Town of Penfield by its exclusionary policies, practices and laws has and continues, therefore, to cause me real harm by denying me the opportunity to reside there."[12]

Plaintiffs Warth, Reichert, Vinkey, and Harris suffer actual economic injury as a direct result of Penfield's exclusionary zoning ordinance and defendants' administration of that law. Each of these plaintiffs is a taxpayer and property owner residing in the City of Rochester, New York. They have alleged

[12] Affidavit of Rosa Sinkler, at paragraphs 16-17.

that defendants' exclusion of low and moderate income housing units forces the City of Rochester to assume the ever increasing burden of providing such housing, much of which is tax abated. As the amount of tax abated property in the City increases, individual property owners and taxpayers, such as plaintiffs, must assume a larger burden of the taxes which are needed to finance essential services. The tax rate in Rochester, for example, has continually risen from $42.06 per $1,000 assessed valuation in 1959 to $80.95 in 1972. This increased financial burden on property owners residing in the City of Rochester is attributable, in part, to the fact that Penfield refuses to provide its fair share of tax abated low and moderate income property and thus forces the City and its taxpayers to assume the cost.

Manifestly, plaintiffs Warth, Reichert, Vinkey and Harris have such a personal economic stake in the continuance of this litigation as to ensure the requisite concrete adverseness. Each of these plaintiffs is being forced to assume not only the economic hardship caused by spiraling property taxes, but also the social and environmental problems resulting from the concentration of multifamily, low and moderate income housing units in the urban area. "The effect of Penfield's exclusionary practices which create a concentration of low, moderate housing in the City of Rochester and produce . . . a density crush, also has direct effect on the City of Rochester residents in incidents of crime and provisions for law enforcement."[13]

Petitioners further contend that the organizational plaintiffs are also injured by defendants' zoning practices and policies and, accordingly, have standing to assert their claims in this action. Rochester Homebuilders Association, Inc., is a nonprofit trade association of persons and companies engaged in construction, development, and maintenance of residential housing in the metropolitan Rochester area. Over 110 of its members are engaged directly in the construction of sale and rental housing to

[13] Affidavit of Warth, Reichert, Vinkey and Harris, at paragraph 19.

the public at large. During the past 15 years, approximately 80% of the private housing units constructed in the metropolitan Rochester area — including the Town of Penfield — were constructed by members of this trade association.

The District Court denied the Home Builders Association's request to intervene and the Second Circuit affirmed the denial on the ground that the Association lacks standing. Once again, the court ignored the substantial economic injury which members of the Association have suffered as a direct consequence of defendants' exclusionary zoning practices and policies. Indeed, the uncontradicted affidavit submitted in support of the motion to intervene states that members of the Association have been unable to construct low and moderate income housing in Penfield as a result of the zoning ordinance and defendants' administration of that law:

> "The Rochester Home Builders Association alleges that they have been subject to the same discriminatory and exclusionary zoning practices as alleged in Plaintiffs' Complaint, and as a result thereof have been unable to construct housing and provide same for all of the metropolitan Rochester area population which is entitled to the opportunity to purchase such housing, *and that specifically members of the Rochester Home Builders Association have been denied relief from such zoning ordinances permitting them to construct such housing.*" (emphasis added).[14]

The Association specifically alleges that Penfield's restrictive zoning ordinance and defendant's implementation of the law has prevented, and continues to prevent, members of the Association from developing, selling and renting housing to all the members of the metropolitan Rochester area which might require low and moderate income housing. As a result, members of this organization are being deprived of substantial business opportunities and profits and have suffered damage in the amount

[14] Affidavit of Sanford Liebschutz, Esq., at paragraph 3.

of $750,000.00. Petitioners submit that it is difficult, indeed, to imagine a party with a greater economic stake in the outcome of this litigation than the Rochester Homebuilders Association, Inc. and its members.

Similarly, Metro-Act of Rochester, Inc., and its members have suffered direct injury as a result of defendants' practices and policies and, consequently, have a personal stake in the resolution of this matter. Metro-Act, a nonprofit corporation, was founded in 1964, after the riots in the decaying inner city of Rochester, and is now composed of approximately 350 individual members. One of its primary purposes is to pursue activities designed to secure open housing in the Rochester suburbs. Specifically, Metro-Act, has presented the Town of Penfield with a number of proposals to end the racially exclusionary zoning practices and policies existing in Penfield. Robert Warth, President of Metro-Act in 1971-72, commented on defendants' unwillingness to consider such proposals:

> "After making such a tremendous effort to discuss the Penfield housing problems with the Town Board officials and meeting with an attitude of unwillingness on the part of the Town of Penfield officials to consider Metro Act's proposals or even to meet and discuss the proposals, Metro Act members had the clear impression that the objective of the Town of Penfield was to delay indefinitely any real meeting with Metro Act members or a real consideration of the Metro Act proposal. Under the circumstances, there was no other alternative than to initiate this lawsuit."[15]

As a result of the exclusionary zoning ordinance and defendants' administration of the law, Metro-Act members are suffering direct injury in that they are losing the benefits of living in an integrated community. As Mr. Warth stated, "Metro-Act is working for open housing in the suburbs because, in part, only by providing maximum choice in housing can

[15]Affidavit of Robert Warth, at paragraph 14.

Metro-Act members and their children be spared an eventual repeat of ghetto confrontations and riots .... Metro-Act members believe that it is to their own children's benefit to learn early in life to come to healthy terms with different races and ethnic groups."[16] Although this injury inflicted upon Metro-Act members is not economic, it nevertheless is such a real and concrete harm, resulting directly from defendants' illegal practices and policies, as to ensure the requisite adverseness.

Finally, Housing Council in the Monroe County Area, Inc., has standing to assert that it and its members are adversely affected by defendants' exclusionary and socially discriminatory zoning practices and policies. The Housing Council is a nonprofit corporation which was organized in response to a recommendation contained in a 1970 study prepared by the Rochester Center for Governmental and Community Research and entitled "Housing in Monroe County, New York." This study was prepared for the Metropolitan Housing Committee, which was appointed jointly by the City and County Managers under authorization from the Rochester City Council and the Monroe County Board of Supervisors. The study recommended, *inter alia*, that a housing council be established, composed of representatives of relevant agencies, institutions and groups interested in housing in order to channel the fragmented and uncoordinated housing efforts in the community into meaningful action. Accordingly, the Housing Council's purposes, as stated in its constitution, include the following:

> "The Corporation shall be organized and operated exclusively for the purpose of receiving, maintaining, or administering one or more funds of real or personal property, or both, and using and applying the whole or any part of the income and principal thereof for the charitable purpose of combating community deterioration, eliminating racial and economic prejudice

[16]Id., at paragraph 6.

and discrimination in housing, and lessening the burdens of government in the Monroe County area of New York . . ."[17]

The Housing Council's membership is comprised of seventy-one (71) public and private organizations which are actively participating in efforts to eliminate racial and economic discrimination in the housing market. At least seventeen (17) of the charter member groups have been involved, are involved, or hope to be involved directly in the development and construction of low and moderate income housing. Indeed, at least one such group, Penfield Better Homes Corporation, has been actively attempting to develop moderate income housing in the Town of Penfield, but has been stymied by its inability to secure the necessary approvals from the defendants in this action. Moreover, several of the charter member groups, including the Monroe County Department of Social Services, the City of Rochester's Department of Urban Renewal and Economic Development, and the Urban Renewal Agency, are government agencies which have a direct concern with and interest in the production of adequate, multiracial, low and moderate income housing in the metropolitan Rochester area.[18]

Petitioner, Housing Council, urges that Penfield's restrictive zoning ordinance and defendants' illegal actions are thwarting the efforts of the organization and its members to achieve the stated purposes and undertake activities to eliminate racial and economic prejudice and discrimination in the housing market in the metropolitan Rochester area. The Housing Council is not simply using this lawsuit as "a vehicle for the vindication of the value interests of concerned bystanders."[19] Rather, the

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[17] Affidavit of John Mitchell, Executive Director of the Housing Council in the Monroe County Area, Inc., at paragraph 4.

[18] Id., at paragraphs 5-8.

[19] *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 687, 93 S.Ct. 2405, 2416 (1973).

organization, is asserting that the challenged zoning law and defendants' actions are inflicting harm on the Housing Council, itself, and its members. Indeed, defendants are preventing the Council and its members from pursuing specific activities designed to further the organization's purpose of receiving and administering funds of real or personal property and using the income and principal thereof to combat community deterioration and eliminate discrimination in the housing market.

Petitioners submit that each and every plaintiff in this action is suffering actual injury as a result of Penfield's restrictive zoning ordinance and defendants' practices and policies in administering that law. In these circumstances, each plaintiff has a sufficient stake in the outcome of this litigation to guarantee that the issues will be presented in an adversary context and in a form capable of judicial resolution.

Reasons for Granting the Writ of Certiorari

I.

The Decision Below is in Direct Conflict with Decisions of the Courts of Appeals of the Third, Fifth, Eighth, and Tenth Circuits.

The Second Circuit's determination that petitioners lack standing to challenge defendants' exclusionary and racially discriminatory zoning practices and policies is contrary to the decisions of other federal Courts of Appeals.

The issue confronting the Eighth Circuit in *Park View Heights Corporation v. City of Black Jack*, 467 F. 2d 1208 (8th Cir. 1972), was, as here, "the validity of a zoning ordinance which effectively prohibits the construction of multiracial, federally subsidized, moderate and low income housing . . . ." Id. at 1210. Plaintiffs, there, were two nonprofit corporations, the Inter-Religious Center for Urban Affairs, Inc. [hereinafter, ICUA] and Park View Heights Corporation, as well as eight

individuals. The individual plaintiffs were residents of the City of St. Louis who desired "to live in St. Louis County due to its better economic, educational and recreational environment but have been unable to find housing within an affordable price range." Id. at 1210 n.2 The District Court held that ICUA and Park View lack standing and that no case or controversy existed as between the individual plaintiffs and the defendants.

The Eighth Circuit, however, reversed this determination and concluded that plaintiffs have the requisite standing and that the issues are proper for judicial resolution. That court noted that the organizational plaintiffs have standing, on behalf of themselves and the individuals who might reside in the housing units, "to question whether the purpose and effect of the ordinance is to exclude low and moderate income individuals from the City of Black Jack . . ." Id. at 1212. Moreover the court underscored the injury to the individual plaintiffs:

> "The statistics cited by the plaintiffs indicate a great need to provide low and moderate income housing in the suburban areas, a need which Park View and ICUA are trying to fill. Any attempt to interfere with this program may work a visible and immediate hardship on the class of low and moderate income citizens of the City of St. Louis"

Id. at 1216.

Similarly the Fifth Circuit has held that potential residents of low and moderate income housing have standing to challenge the exclusion of such housing units. Individual plaintiffs in *Crow v. Brown*, 332 F. Supp. 382, 390 (N.D. Ga. 1971), contended "that they are being denied access to low rent public housing outside the racially concentrated areas of Fulton County due to the arbitrary action and thoughtless inaction of the County . . . ." The Fifth Circuit rejected the suggestion that the parties lack the requisite injury which is necessary to ensure that the issues will be presented in an adversary context. *Crow v. Brown*, 457 F. 2d 788, 790 (5th Cir. 1972). See also, *United*

Farmworkers of Florida Housing Project, Inc., v. City of Delray Beach, 493 F. 2d 799 (5th Cir. 1974) (individual farmworkers have standing to challenge actions which have stymied efforts to build federally assisted low income housing and which have a racially discriminatory effect). Similarly, the Tenth Circuit in *Dailey v. City of Lawton*, 425 F. 2d 1037 (10th Cir. 1970), held that potential residents of low income housing have standing to challenge refusal to permit construction of such housing units.

In *Shannon v. United States Department of Housing and Urban Development*, 436 F. 2d 809 (3d Cir. 1970), the Third Circuit was presented with an analogous problem. There, plaintiffs were "white and black residents (some homeowners and some tenants), businessmen in, and representatives of private civic organizations in the East Popular Urban Renewal Area of Philadelphia." Id. at 811. They alleged that the placement of low and moderate income housing units on certain sites would have the effect of increasing the already high concentration of low income black persons. The court held that these plaintiffs have standing even though they were not potential residents of the housing units. The Third Circuit said, "The test, for Article III purposes, is whether or not plaintiffs allege injury in fact. They do indeed. They allege that concentration of low income residents in a 221(d)(3) rent supplement project in their neighborhood will adversely affect not only their investments in homes and businesses, but even the very quality of their daily lives." Id. at 818.

Petitioners submit that they, too, are injured by respondents' exclusionary and discriminatory zoning practices and policies. The Second Circuit, however, attempted to distinguish the instant case from these other decisions on the ground that they involved a particular housing proposal or project. The court stated, ". . . we note that the standing of potential residents in these cases presents an issue very different from the one presented here. The focusing of the controversy on a particular 'project assures 'concrete adverseness'." [20]

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20 *Warth v. Seldin*, supra at —, Appendix A, infra at 10.

Petitioners contend that such a distinction ignores the undisputed facts and is without merit. The underlying issue, here, involves both a zoning ordinance which prohibits multiracial low and moderate income housing units and official actions which have obstructed any attempt to build such housing. Members of Rochester Home Builders Association, Inc., have been unable to obtain the necessary relief from the zoning law to enable them to construct such housing units.[21] Metro-Act has submitted proposals which respondents have been unwilling to even consider.[22] Project proposals for construction of low and moderate income housing in Penfield have been stymied by respondents' practice of delaying action on proposals, denying approval for arbitrary reasons, failing to provide necessary support services, and amending the zoning ordinance to make approval virtually impossible.[23] In these circumstances, it would be anomolous, indeed, to deny petitioners standing to challenge Penfield's refusal to permit construction of low and moderate income housing on the ground that no such housing is presently being constructed in that Town.

Moreover, the fact that a particular project is under construction might ease plaintiffs' burden of showing the causal connection between defendants' actions and plaintiffs' injury. However, manifestly, it is not determinative of whether plaintiffs are actually suffering injury.

Accordingly, petitioners urge that this Court grant the Writ of Certiorari to resolve the conflict between the decision below and the decisions of the Third, Fifth, Eighth and Tenth Circuits.

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[21] See note 14, supra.

[22] See note 15, supra.

[23] See page 6, supra.

II.

The Decision Below is in Conflict With Applicable Decisions of the Supreme Court of The United States

The Second Circuit determined that the individual and organizational plaintiffs lack standing to challenge Penfield's exclusionary and discriminatory zoning ordinance and defendants' administration of that law. In so doing, the court said:

> "Although the Supreme Court has discussed standing to sue on many occasions, certain aspects of the doctrine continue to present difficulties. Moreover, during the last few years the Court has revolutionized the law of standing. In *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970), and *Barlow v. Collins* 397 U.S. 159 (1970), the Court announced a two-pronged test of standing: the plaintiff must allege an "injury in fact," and must seek to protect an interest "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Data Process, supra*, at 152-153. However, the Court has not explained what constitutes an "injury in fact." See Dugan, *Standing to Sue: A Commentary on Injury in Fact*, 22 Case W. Res. L. Rev. 256, 258 (1971)."[24]

Although the Second Circuit recognized that "certain aspects of the [standing] doctrine continue to present difficulties," that court chose to ignore this Court's recent discussion of this very doctrine in *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 93 S.Ct. 2405 (1973).

There, various environmental groups instituted an action challenging the decision by the Interstate Commerce Commission to permit railroads to file a surcharge on freight rates. The named plaintiffs included SCRAP, an unincorporated

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[24] *Warth v. Seldin*, supra at —, Appendix A, infra at 6.

association formed by five law students for the purpose of enhancing the quality of the human environment. The Association alleged that its members suffered economic, recreational, and aesthetic harm as a result of the rate increase. SCRAP maintained that each of its members was forced to pay more for finished products. Also, it was asserted that each of SCRAP's members uses the forests, rivers, streams and mountains and that such use would be adversely affected by the surcharge. Additionally, plaintiffs alleged that the rate increase resulted in increased air pollution. Finally, it was alleged that each member was "forced to pay increased taxes because of the sums which must be expended to dispose of otherwise reusable waste materials" Id. at 678, 93 S.Ct. at 2411.

The Court held that SCRAP had standing to challenge the surcharge. Mr. Justice Stewart[25] stated that "[i]n interpreting 'injury in fact' we made it clear that standing was not confined to those who could show 'economic harm' . . . ." Id. at 686, 93 S.Ct. at 2415. Moreover, the Court added, "we have already made it clear that standing is not to be denied simply because many people suffer the same harm." Id. at 687, 93 S.Ct. at 2416. Finally the Court rejected any notion that a party must show that it is "significantly" affected by the challenged action:

> "The Government urges us to limit standing to those who have been 'significantly' affected by agency action. But, even if we could begin to define what such a test would mean, we think it fundamentally misconceived. 'Injury in fact' reflects the statutory requirement that a person be 'adversely affected' or 'aggrieved' and it serves to distinguish a person with a direct stake in the outcome of a litigation — even though small — from a person with a mere interest in the problem. We have allowed important interests to be vindicated by plaintiffs with no

[25]Mr. Justice Douglas and Mr. Justice Marshall joined in this part of the opinion of the Court. Mr. Justice Brennan and Mr. Justice Blackmun would hold that plaintiffs have standing even if they suffered no injury in fact.

> more at stake in the outcome of an action than a fraction of a vote. See Baker v. Carr., 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663; a five dollar fine and costs, see McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 303; and a $1.50 poll tax, Harper v. Virginia Bd. of Education, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169" Id. at 689 n. 14, 93 S.Ct. at 2417 n. 14.

Id. at 689 n. 14, 93 S.Ct. at 2417 n. 14.

Petitioners, here, urge that they are suffering injury which is no more remote or speculative than that suffered by the parties in *SCRAP*. Petitioners Warth, Reichert, Vinkey and Harris, allege — as did plaintiffs in *SCRAP* — that they are suffering economic injury in that they are forced to pay higher property taxes as a result of respondents' actions. Petitioner Ortiz, as a direct result of respondents' exclusionary zoning practices and policies, was forced to live forty-two miles from his place of work in Penfield and suffer burdensome commuting problems and cost. Respondents' exclusion of nonaffluent and nonwhite persons also inflicts injury upon petitioners Broadnax, Reyes and Sinkler. These persons and their families have been excluded from Penfield because of their race and income level and have been forced to reside in the decaying inner city environment which is characterized by dilapidated, sub-standard housing, uncontrolled violence and insufficient or nonexistent community services. Moreover, these petitioners are suffering the real harm of being unable to raise their children in an integrated community and obtain the benefits of the improved housing conditions and services in the suburban Town of Penfield.

Similarly, the organizational petitioners, here, as in *SCRAP*, are suffering actual injury as a result of the challenged policies and practices. Indeed, Rochester Home Builders Association, Inc., alleged that its members, who have constructed over 80% of the housing units in metropolitan Rochester area, are being deprived of substantial business opportunities and profits as a

result of respondents' exclusion of multiracial, low and moderate income housing. Manifestly, such economic injury is more substantial than the "identifiable trifle" which has been held to be enough to confer standing. Id. (quoting Davis, Standing: Taxpayers and Others, 35 U.Ch.L.Rev. 601, 613).

So too, respondents' exclusionary and racially discriminatory zoning practices and policies are inflicting harm upon Metro-Act of Rochester, Inc., and its members. The organization, which has presented specific proposals to respondents concerning the elimination of the exclusionary zoning practices, has been prevented from pursuing activities designed to secure open housing in the metropolitan Rochester area. Moreover, the members of Metro-Act are suffering direct injury in that they are losing the social benefits of living in the integrated community. Although such injury is not economic, it nevertheless is a real harm flowing directly from respondents' actions. Besides, as the Court said in *SCRAP*, "we made it clear that standing was not confined to those who could show 'economic harm.' " Id. at 686, 93 S.Ct. at 2415.

Finally, Housing Council in the Monroe County Area, Inc., is "injured in fact" by the Penfield zoning law and administration of that ordinance. This corporation was designed specifically for the purpose of receiving and administering funds or personal property for the purpose of combating community deterioration and eliminating racial and economic prejudice and discrimination in housing. The Housing Council and its members have been, and continue to be, prevented by defendants' actions from engaging in the necessary activities to further the purpose of receiving and administering such funds to eliminate discrimination in the housing market.

Petitioners contend that they are not simply concerned bystanders with a "mere interest in the problem." Id. at 689, n.14, 43 S.Ct. 2417 n.14. Rather, petitioners have a direct stake in the outcome of this litigation and, accordingly, have standing

under the principles enunciated in *SCRAP*.[26] Yet, the Second Circuit ignored the *SCRAP* decision and determined that petitioners are not injured in fact. Petitioners submit that the Second Circuit, in reaching this determination, did not concentrate solely on the existence of the harm, but rather erroneously focused on the difficulties petitioner might have in proving the causal relationship between respondents' actions and the alleged injury. The court said, for example, ". . . none of the named plaintiffs has suffered from any of the specific, overt acts alleged."[27] However, what this Court said in *SCRAP*, supra at 689-90, 93 S.Ct. at 2417, is equally applicable here:

> "If, as the railroads now assert, these allegations were, in fact, untrue, then the appellants should have moved for summary judgment on the standing issue and demonstrated to the District Court that the allegations were sham and raised no genuine issue of fact. We cannot say on these pleadings that the appellees could not prove their allegations which, if proved, would place them squarely among those persons injured in fact by the Commission's action, and entitled under the clear import of *Sierra Club* to seek review." (footnote omitted)

Petitioners request that this Court grant the Writ of Certiorari to resolve the inconsistency between the Second Circuit's determination and this Court's decision in *SCRAP*.

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[26] The instant case is readily distinguishable from *United States v. Richardson*, — U.S. —; — S.Ct. — (1974) (42 U.S.L.W. 5076), and *Schlesinger v. Reservists Committee to Stop the War* — U.S. —; — S.Ct. — (1974) (42 U.S.L.W. 5088). Plaintiffs in those cases did not suffer the type of particularized concrete harm which has been inflicted upon petitioners here.

[27] *Warth v. Seldin*, supra at —, Appendix A, infra, at 11-12.

III.

The Decision Below Raises Significant and Recurring Questions of Federal Law Which Should Be Settled by this Court.

Congress has declared that the "general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing . . . and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family . . . ." 42 U.S.C. §1441. See also *Thorpe v. Housing Authority of Durham*, 393 U.S. 268, 281, 89 S.Ct. 518, 525 (1969). Moreover, "by legislative act and judicial decision, this nation is committed to a policy of balanced and dispersed public housing . . . . Among other things, this reflects the recognition that in the area of public housing local authorities can no more confine low income blacks to a compacted and concentrated area than they can confine their children to segregated schools." *Crow v. Brown*, 332 F.Supp. 382, 390 (N.D. Ga. 1971), aff'd 457 F.2d 788 (5th Cir. 1972) (citations omitted) (footnote omitted).

Petitioners, here, seek to further these national housing goals and prohibit respondents from pursuing policies and practices which exclude multiracial, low and moderate income housing. As a result of these practices and policies, persons such as petitioners Sinkler, Broadnax and Reyes are being forced to live in substandard housing in the decaying inner city. Moreover, Penfield's exclusionary zoning ordinance and respondents' implementation of the ordinance are hastening the day when Rochester will become, in essence, a black city with a solid white perimeter. Accordingly, all petitioners are being deprived of the social benefits of living in an integrated community.

In *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 93 S.Ct. 364 (1972), plaintiffs sought to challenge defendants' racially discriminatory housing practices. Plaintiffs alleged that they had been injured in that

> "They — the two tenants — claimed they had been injured in that (1) they had lost the social benefits of living in an integrated community; (2) they had missed business and professional advantages which would have accrued if they had lived with members of minority groups; (3) they had suffered embarrassment and economic damage in social, business, and professional activities from being 'stigmatized' as residents of a 'white ghetto'."

Id. at 208, 93 S.Ct. at 366 (footnote omitted). This Court held that plaintiffs had been injured by the "loss of important benefits from interracial associations" and, thus, had standing to challenge the discriminatory housing practices. Id. at 210, 93 S.Ct. at 367. Moreover, this Court said:

> "The dispute tendered by this complaint is presented in an adversary context. *Flast v. Cohen*, 392 U.S. 83, 101, 88 S.Ct. 1942, 1953, 20 L.Ed.2d 947. Injury is alleged with particularity, so there is not present the abstract question raising problems under Art. III of the Constitution. The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, 'the whole community,' 114 Cong. Rec. 2706, and as Senator Mondale who drafted §810(a) said, the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living quarters.' 114 Cong. Rec. 3472.

Id. at 211, 93 S.Ct. at 368.

This Court's resolution of the standing issue in *Trafficante* involved an interpretation of the Civil Rights Act of 1968, 42 U.S.C. §3610. Mr. Justice Douglas, writing for the Court, stated that it is unnecessary to reach the question of standing

under 42 U.S.C. § 1982. Id. at 209 n.8, 93 S.Ct. at 367 n.8. In view of this apparent limitation, the Second Circuit refused to apply the standing principles enunciated in *Trafficante* to the facts of the instant case.[28]

Petitioners submit that they, too, are suffering injury in fact due to the loss of benefits resulting from interracial associations and living in an integrated community. Accordingly, petitioners urge that this Court now hold that the standing requirements of *Trafficante* are equally applicable to this action under the Civil Rights Acts, 42 U.S.C. §§1981-1983. To hold otherwise would frustrate the national commitment to provide each American a decent home in a suitable, integrated living environment.

Petitioners pray that this court grant the Writ of Certiorari to resolve an important question of federal law and decide the issue which remains unsettled after *Trafficante*.

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[28] *Warth v. Seldin*, supra at —. Appendix A, infra, at 13.

CONCLUSION

The decision below is in conflict with decisions of this Court as well as Courts of Appeals in other circuits and raises significant and recurring questions of federal law. Accordingly, the Writ of Certiorari should be granted to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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Dated: July 12, 1974

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 139, 144—September Term 1973.

(Argued November 27, 1973 Decided April 18, 1974.)

Docket Nos. 73-1748
73-1749

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKEY, Individually and on behalf of all other persons similarly situated, KATHERINE HARRIS, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC.,

Plaintiffs-Appellants,

v.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR.

DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Defendants-Appellees.

Before:

MOORE, HAYES and TIMBERS,

Circuit Judges.

Appeal from orders entered in the United States District Court for the Western District of New York, Harold P. Burke, *Judge*, granting motion to dismiss complaint for lack of standing and failure to state a claim upon which relief could be granted and denying motion of Rochester Homebuilders Association, Inc., to intervene as plaintiffs.

Affirmed.

EMMELYN LOGAN-BALDWIN, Rochester, New York (Frank A. Aloi, Robinson, Williams, Robinson & Angeloff, Rochester, New York, on the brief), *for Plaintiffs-Appellants Warth, Reichert, Vinkey, Harris, Ortiz, Broadnax, Reyes, Sinkler, and Metro-Act of Rochester, Inc.*,

MICHAEL NELSON and RICHARD WESLEY, on the brief, *for Plaintiff-Appellant Housing Council in the Monroe County Area, Inc.*,

SANFORD J. LIEBSCHUTZ, Rochester, New York (Liebschutz, Rosenbloom & Samloff, Rochester, New York, on the brief), *for Intervenor-Appellant Rochester Homebuilders Association, Inc.*,

DOUGLAS S. GATES, Rochester, New York (Harris, Beach & Wilcox, Rochester, New York, on the brief), *for Defendants-Appellees,*

THE NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING (Norman C. Amaker and Mollie W. Neal, Washington, D.C., on the brief), filed a brief as amicus curiae urging reversal.

HAYS, *Circuit Judge:*

Appellants brought this suit as a class action against the appellees, the Town of Penfield, New York, and the members of its Town Board, Town Planning Board, and Zoning Board. The complaint alleged that the town's zoning laws, on their face and as applied, violated appellants' rights under the first, ninth, and fourteenth amendments to the Constitution of the United States and 42 U.S.C. §§ 1981, 1982, and 1983. The district court dismissed the complaint for lack of standing and failure to state a claim upon which relief could be granted and denied appellants class action status. The court also denied a motion by the Rochester Homebuilders Association, Inc., to intervene as a plaintiff.

We affirm on the ground that appellants lack standing.

I. FACTS

Accepting appellants' factual allegations as true, as we must, we find the following facts relevant. The Town of Penfield is a suburb of Rochester. Its zoning laws are fairly typical for a suburban community. The town has zoned 90% of all vacant land for single family detached housing. The ordinance also fixes minimum lot sizes, floor areas, lot widths, and setbacks for dwellings. Where the ordinance

does permit multi-family dwellings, it limits density to twelve units per acre, limits the portion of the lot which may be occupied by the dwelling, and requires a minimum number of garage and unenclosed parking facilities for each unit.

The ordinance provides for Planned Unit Developments (PUD), which may contain a mixture of single-family and multi-family units. A substantial part of each PUD must be reserved for single-family dwellings with specified minimum acreages.

Appellants' complaint goes beyond the face of the town's zoning laws and further alleges certain affirmative acts which it claims deprived them of their rights. These acts involve various proposals by builders for multi-family housing in Penfield. One Joseph Audino on several occasions proposed a PUD for a site known as Beacon Hills. The Town Planning Board first denied the proposal, then accepted it with certain modifications which reduced the permissible density. The Town Board first accepted the proposal with the modifications, then rescinded the necessary rezoning. The town apparently claims that sewer facilities in the district are inadequate to serve the proposed development. The builder now plans to pump sewage to another district. Neither the builder nor anyone associated with him is a plaintiff in this action.

Penfield Better Homes, Inc., has proposed a project known as Highland Circle for "low moderate income housing." In September 1969 the Planning Board denied the proposal on a number of grounds. The corporation is not a plaintiff nor associated with any plaintiff in this action.[1]

1 Penfield Better Homes is a member of appellant Housing Council in the Monroe County Area, Inc. However, this does not suffice to give Housing Council standing. See discussion of Housing Council, infra. Appellants also allege that one director of Penfield Better Homes is a member of appellant Metro-Act of Rochester. This even more clearly fails to confer standing. See discussion of Metro-Act, infra.

A proposal by O'Brien Homes, Inc., to build apartment housing was originally denied. The Planning Board has yet to act on a modification of the same proposal.

Appellants also refer to several other proposals for apartment housing which have met with little success. They claim that only two proposals for PUDs have passed the first stage of the necessary three stages of approval. In no case do appellants allege any involvement in these proposals.

Appellants argue that the Penfield zoning laws, on their face and as applied, violate their rights in a number of ways. First, appellant taxpayers of Rochester claim that because of Penfield's zoning laws the City of Rochester must assume more than its "fair share" of low income, tax abated housing property, thereby shrinking Rochester's tax base and forcing property owners in Rochester to pay higher property taxes.[2] Second, appellants claim that Penfield's zoning practices unconstitutionally bar low and middle income persons, especially members of racial minority groups, from residing in Penfield.[3] Intervenor-appellant Rochester Homebuilders Association, Inc. claims that the town's zoning practices have deprived its members of the opportunity to construction housing for low and middle income persons, thereby harming the association's members financially.

Appellants seek a declaratory judgment that Penfield's zoning practices are illegal, an injunction against enforcing the zoning ordinance, an injunction compelling enactment of an acceptable ordinance, and monetary damages.

2 These appellants also claim that appellees deprive them of a fair share of their federal tax dollars by refusing to permit federally financed housing in the town.

3 Appellants also claim that appellees' practices violate their right to travel under the first, ninth, and fourteenth amendments and their right of peaceable assembly under the first and fourteenth amendments.

II. Standing

Although the Supreme Court has discussed standing to sue on many occasions, certain aspects of the doctrine continue to present difficulties. Moreover, during the last few years the Court has revolutionized the law of standing. In *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150 (1970), and *Barlow* v. *Collins*, 397 U.S. 159 (1970), the Court announced a two-pronged test of standing: the plaintiff must allege an "injury in fact," and must seek to protect an interest "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Data Processing*, supra, at 152-153. However, the Court has not explained what constitutes an "injury in fact." See Dugan, *Standing to Sue: A Commentary on Injury in Fact*, 22 Case W. Res. L. Rev. 256, 258 (1971). Moreover, reliance on precedents is especially hazardous in this area. As the Court remarked in *Data Processing*, "[g]eneralizations about standing to sue are largely worthless as such." 397 U.S. at 151. The Court has laid down some rules in certain areas, such as taxpayer, competitor, and environmental suits. Except for appellants who claim standing as taxpayers, however, these rules are not very helpful here.[4]

Standing is an element of justiciability, "surrounded by the same complexities and vagaries that inhere in justiciability." *Flast* v. *Cohen*, 392 U.S. 83, 98 (1968).

The gist of the question of standing is whether the plaintiff has "alleged such a personal stake in the outcome of

4 In *Data Processing* the Court acknowledged the limited authority of standing cases from one area in relation to cases in other areas:

> "*Flast* was a *taxpayer's* suit. The present is a *competitor's* suit. And while the two have the same Article III starting point, they do not necessarily track one another." 397 U.S. at 152 (emphasis in original).

the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). See also *O'Shea* v. *Littleton*, —— U.S. ——, 94 S. Ct. 669, 675 (1974); *Flast* v. *Cohen*, supra, at 99.

A. *Appellant Taxpayers of Rochester*

Appellants Vinkey, Reichert, Warth, and Harris own land within the city of Rochester. They claim that the Penfield zoning laws exclude low and moderate income persons, thereby requiring Rochester to permit more than its "fair share" of tax-abated housing projects. This shrinks the tax base of Rochester, which then must impose higher tax rates on appellants and others similarly situated in order to meet its fiscal needs.

As a general rule the interests of a federal taxpayer in federal expenditures are too "minute and indeterminable . . . fluctuating and uncertain" to provide a basis for standing. *Frothingham* v. *Mellon*, 262 U.S. 447, 487 (1923). The rule applies equally to state taxpayer suits in federal courts. *Doremus* v. *Board of Education*, 342 U.S. 429 (1952). In *Flast* v. *Cohen*, 392 U.S. 83 (1968), the Court created an exception to the rule: a federal taxpayer may contest measures alleged to violate "specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power." Id. at 103.

Appellants do not allege a violation of a "specific constitutional limitation" on taxing and spending. Indeed, they do not even allege that Rochester's taxes or expenditures are unconstitutional. They allege only that certain acts of appellees which do not involve taxing or spending have operated to raise their taxes.

In *Flast* the Court stated that its decision was "consistent with the limitation upon state-taxpayer standing

in federal courts in *Doremus* . . . ." 392 U.S. at 102. Certainly if taxpayer standing was not justified in *Doremus* because plaintiff's interest was too remote, standing cannot be found here, where there is such an attenuated line of causation between the allegedly illegal acts (Penfield's zoning laws) and the injury of which appellants complain (higher property taxes). A great variety of actions taken by a state or a municipality might arguably affect the rate of taxation in other states or towns. This hardly gives taxpayers in the affected states or towns standing to contest all such actions.[5]

B. *Individual Appellants Claiming Standing on Other Grounds*

Appellants Broadnax, Sinkler, and Reyes are blacks and Puerto Ricans of low income who reside in Rochester. Each has sought but failed to obtain housing in Penfield. They allege that Penfield's zoning laws effectively bar low income housing within the town and therefore exclude them and persons similarly situated from living in Penfield. Appellant Ortiz lives in Wayland, New York, and works in Penfield. He makes the same allegations as appellants Broadnax, Sinkler and Reyes, and in addition claims as injury the commuting expenses he incurs because he cannot live in Penfield.

None of the appellants claims that anyone has refused to sell or lease housing or property to him. Indeed, appellants concede that they cannot afford any existing housing within the town. They do not claim to have any interest in land within the town or any connection with any plan to construct housing for them within the town.

5 Appellants also base a claim of standing on their status as federal taxpayers. See note 2, supra. This claim does not attack a spending measure of Congress and is not based on a specific constitutional limitation on spending. The claim therefore fails.

The Supreme Court has not established guidelines as to what constitutes an injury in fact for purposes of standing in this area. Nor have the lower federal courts, in this circuit or otherwise, considered the specific issue raised here. Appellants cite several federal cases in which a party was held to have standing to challenge zoning on civil rights grounds. In most of these cases the party attacking zoning had an interest in land.[6] A few cases in other circuits have taken a short step beyond this. In *Park View Heights Corp.* v. *City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972), and *Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970), developers contested zoning which

6 In *Kennedy Park Homes Ass'n, Inc.* v. *City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971), the Diocese of Buffalo had committed itself to sell thirty acres of land it owned in Lackawanna to Kennedy Park Homes for low-income housing. Both the Diocese and the Association clearly had an interest in land.

In *Township of River Vale* v. *Town of Orangetown*, 403 F.2d 684 (2d Cir. 1968), this court held that plaintiff town had standing to sue defendant town which had rezoned property adjoining plaintiff on the allegation that the zoning was arbitrary and capricious and would injure plaintiff by reducing its revenues. We held that plaintiff need not be a resident of the town whose zoning practices were challenged. Id. at 686. We did not abandon the requirement, which plaintiff clearly met, that a party have a personal stake in the outcome. The holding reflects the obvious point that landowners may be affected by the zoning of adjoining properties, and that this interest suffices to confer standing. Cf. 3 K.C. Davis, Administrative Law Treatise § 22.16 at 283 (1958).

Neither *Boraas* v. *Village of Belle Terre*, 476 F.2d 806 (2d Cir.), prob. juris. noted, 94 S. Ct. 234 (1973), nor *Norwalk CORE* v. *Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968), involved the kind of standing issue presented here. In *Boraas* we granted standing to unrelated persons living together in an apartment to challenge an ordinance limiting the right of unrelated persons to live in the same dwelling. In *Norwalk CORE* persons displaced by urban renewal had standing to challenge the city's procedures in relocating them. In each case plaintiff's personal stake was clear.

In most of the civil rights challenges to zoning in other circuits plaintiffs also had some interest in land sufficient to warrant standing. See *Southern Alameda Spanish Speaking Org.* v. *City of Union City*, 424 F.2d 291 (9th Cir. 1970); *Sisters of Providence* v. *City of Evanston*, 335 F. Supp. 396 (N.D. Ill. 1971); *Crow* v. *Brown*, 332 F. Supp. 382 (N.D. Ga. 1971), aff'd, 457 F.2d 788 (1972) (per curiam).

prevented them from building low income housing projects on parcels of land which they owned. In both cases the court permitted potential residents of the proposed projects to join as plaintiffs. Without deciding whether we approve these holdings, we note that the standing of potential residents in these cases presents an issue very different from the one presented here. The focusing of the controversy on a particular project asures "concrete adverseness." The concrete possibility of obtaining new and better housing gives potential residents a personal stake in the outcome. The relief requested is not hypothetical.

The requirement of standing helps to insure that "the questions will be framed with the necessary specificity . . . to assure that the constitutional challenge will be made in a form traditionally thought to be capable of judicial resolution." *Flast* v. *Cohen*, 392 U.S. 83, 106 (1968). See also *Barlow* v. *Collins*, 397 U.S. 159, 167, 171 (1970) (Brennan, *J.*, concurring). In the instant case appellants cannot establish this specificity and the necessary "concrete adverseness."

The doctrine of standing also turns on whether the party in question has a "personal stake in the outcome of the controversy." *O'Shea* v. *Littleton*, —— U.S. ——, ——, 96 S. Ct. 669, 675 (1974); *Sierra Club* v. *Morton*, 405 U.S. 727, 732 (1972); *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). Appellants lack such a personal stake. The essence of their complaint is that the zoning practices of the appellees are unfair. However true that charge may be, absent a showing that appellants themselves have suffered from these practices they lack standing to challenge them. Their dispute with appellees reflects primarily a political disgruntlement. They indicate no benefit which a judgment favorable to them would produce. They allege neither

capability nor intent to construct housing for themselves on any land which the court might order rezoned as an element of relief.

Indeed, appellants' prayer for relief demonstrates their lack of personal stake in the outcome and their lack of standing. They request equitable relief in the form of a declaration that the Penfield zoning ordinance is unconstitutional, an injunction against enforcing it, and an injunction requiring enactment of a new ordinance. Granting this relief would not clear roadblocks to currently planned housing which appellants hope to occupy. It would not benefit appellants in any way in the foreseeable future. The prayer for relief also illustrates the lack of specificity. Appellants request neither zoning of any particular parcels nor approval of any specific projects.

In *O'Shea* v. *Littleton*, —— U.S. ——, 94 S. Ct. 669 (1974), plaintiffs brought suit alleging that defendants, various judicial and law enforcement officials of Alexander County, Illinois, were administering the county's criminal justice system in a discriminatory manner so as to deprive all black and some white citizens of a variety of constitutional rights. The Supreme Court held that plaintiffs had failed to state an Article III case or controversy. 94 S. Ct. at 675. The Court's opinion noted that the complaint "allege[d] injury in only the most general terms" and that "[n]one of the named plaintiffs is identified as having himself suffered any injury in the manner specified." Id. at 676. The threat of injury to the named plaintiffs was too "abstract," "conjectural," and "hypothetical" to give them a "personal stake in the outcome." Id. at 675.

Here we have a similar case. Appellants alleged that appellees' zoning practices deprive low income minority groups of equal protection. However, none of the named plaintiffs has suffered from any of the specific, overt acts

alleged. Thus appellants' personal connection with these practices is too abstract, conjectural, and hypothetical to establish an Article III case or controversy.

C. *Metro-Act of Rochester, Inc.*

Appellant Metro-Act of Rochester, Inc., is a non-profit corporation whose main purpose is "to alert ordinary citizens to problems of social concern." Low income housing is one area to which the organization has directed its attention. Appellant claims standing on a number of grounds, none of which is adequate.

First, appellant claims standing because of its "special interest" in housing matters. The Supreme Court's decision in *Sierra Club* v. *Morton*, 405 U.S. 727, 735-40 (1972), rejected this as a basis for standing.

Second, Metro-Act claims standing as a taxpayer of the city of Rochester. This approach fails for the same reasons stated above with respect to individual taxpayer appellants.

Third, appellant claims standing as representative of its low income members who seek housing in Penfield. Since we have decided that these individuals lack standing, the organization cannot derive standing from them.

Fourth, Metro-Act claims standing on the ground that one director of Penfield Better Homes is one of its members. We have decided that membership of Penfield Better Homes in Housing Council does not suffice to confer standing. (See discussion, infra.) It follows that membership of a director in Metro-Act certainly cannot confer standing.

Finally, relying on *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), Metro-Act claims standing as representative of its members who live in Penfield.[7] In *Trafficante* the plaintiffs, tenants of an apartment complex, challenged the allegedly discriminatory rental practices of their landlord. They claimed as injury the loss of social, business, and professional benefits of living in an integrated community and embarrassment of being stigmatized as living in a "white ghetto." They based their claim of standing on section 810(a) of the Civil Rights Act of 1968, 42 U.S.C. § 3610(a), which gives standing to "[a]ny person who claims to have been injured by a discriminatory housing practice . . . ." The Supreme Court held that plaintiffs had standing.

Trafficante is distinguishable from the present case. We have emphasized that generalizations about standing are largely useless. This is especially true of a case which focused on the peculiarities of one piece of legislation. The Court in *Trafficante* looked to the legislative history and administrative interpretation of section 810(a). 409 U.S. at 210. The Court also considered the practical difficulties of enforcing the Act and concluded that Congress must have intended persons in plaintiffs' position to be able to sue as private attorneys-general. Metro-Act has presented us with no similar factors in this case.

The concurring opinion of Justice White, joined by Justices Blackmun and Powell, further suggests that the holding of *Trafficante* should apply only to cases under the Civil Rights Act of 1968. Justice White expressed doubt that, in the absence of section 810(a), the suit would present an Article III case or controversy. 409 U.S. at 212. The six remaining justices explicitly declined to consider

7 Appellants' complaint did not include residents of the Town of Penfield as a class which they purported to represent. Metro-Act has, however, made this claim on appeal.

whether plaintiff might also have standing under 42 U.S.C. § 1982. 409 U.S. at 209 n.8. The reasoning of the majority opinion and the explicit statement of the three concurring justices strongly indicate that a majority of the Court would not find standing for Metro-Act on this basis.

D. *Housing Council in the Monroe County Area, Inc.*

Housing Council in the Monroe County Area, Inc., is a non-profit corporation whose purpose is to "combat community deterioration through the elimination of racial and economic discrimination in housing." Its membership includes public and private agencies and organizations seeking to improve the housing of persons of low and moderate income. Plaintiffs below moved to add Housing Council as a party plaintiff. The district court held that Housing Council lacked standing. We agree.

Housing Council alleges no injury in fact to itself. To the extent that it bases standing on representation of various groups of residents in the metropolitan Rochester area, its claim fails for the same reasons given in our discussion of other appellants.

Housing Council also claims standing because Penfield Better Homes Corp., one of its members, has been denied approval of a specific housing project proposal. We note first that if this allegation conferred standing on appellant it would confer only that standing which its member would have had. Housing Council has not indicated that it limits its suit to the dispute over the proposal of Penfield Better Homes. Rather it joins in the more general and abstract claims of other appellants.

We think that Housing Council lacks standing to vindicate even the more limited claims which Penfield Better Homes might have against appellees. It is highly doubtful that an organization has standing to represent its members in most cases under the Civil Rights Act. See *Aguayo* v. *Richardson*, 473 F.2d 1090, 1098-1101 (2d Cir. 1973), cert. denied, 94 S. Ct. 900 (1974). Certainly the special circumstances favoring organizational standing in cases like *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 458-60 (1958), and *NAACP* v. *Button*, 371 U.S. 415, 428-29 (1963), are absent here. Alleged specific harm is limited to a single member. There is no reason why Penfield Better Homes cannot assert its own rights as well as or better than Housing Council.

Housing Council therefore lacks standing.

E. *Rochester Homebuilders Association, Inc.*

Rochester Homebuilders Association, Inc., is a nonprofit trade association of persons and companies engaged in various phases of the residential construction industry in the metropolitan Rochester area. In the court below the association moved, pursuant to Fed. R. Civ. P. 24(b), to intervene as plaintiffs in this action. The district court denied the motion on the grounds that the association lacked standing and that its intervention would create undue delay or prejudice. We agree that the association lacked standing and do not reach the Rule 24(b) issue.

As we noted above, an organization may have standing to assert the rights of its members where there are special circumstances. The rule applies to trade associations as well as to other organizations. *National Motor Freight Traffic Ass'n* v. *United States*, 372 U.S. 246 (1963) (per curiam). We find no such special circumstances here.

Moreover, as we noted above with respect to appellant Housing Council, an organization seeking to assert rights of its members has only that standing which its members would have had. Rochester Homebuilders has not tied its claim of standing to specific acts of appellees which have

affected its members. Instead it makes the same claims as other appellants. The members of the association would not have standing to raise these claims. The association cannot derive such standing from them.

Affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
Western District of New York

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKE, Individually and on behalf of all other persons similarly situated, KATHARINE HARRIS, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC.,

Plaintiffs

vs.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chariman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Defendants

CIVIL 1972-42

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Rochester, N.Y. 14614
Attorneys for plaintiffs
(Frank A. Alor & Emmelyn Logan-Baldwin, of counsel)

Andrew V. Siracuse, Esq.
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Attorney for defendants
(Harris, Beach & Wilcox, and James M. Hartman, of counsel)

Sanford J. Liebschutz, Esq.
101 Powers Building
Rochester, N.Y. 14614
Attorney for Rochester Home Builders Association, Inc.

This is an action wherein the plaintiffs seek a declaratory judgment adjudging that the Town of Penfield Zoning Ordinance is unconstitutional and in other respects illegal; they seek to enjoin its administration and a judgment awarding damages, both compensatory and exemplary.

By notice of motion with attached affidavit filed April 6, 1972, James M. Hartman as a member of the firm of Harris, Beach & Wilcox, counsel to Andrew V. Siracuse, attorney for defendants, moves to dismiss the complaint on grounds specifically stated and, in the alternative, for an order for a more definite statement and for an order determining that the action has been improperly instituted as a class action. The motion was argued orally and the respective parties have filed written memoranda in support of their positions.

The plaintiffs Warth, Vinkey, Reichert and Harris, property owners and taxpayers of the City of Rochester, have suffered no measurable or particular direct financial injury occasioned by

the activities complained of. These plaintiffs are not taxpayers of the Town of Penfield. They are not attacking a spending measure of the Town of Penfield. The alleged causal connection between Penfield's zoning laws and the resulting tax burden on residents of Rochester is speculative, remote and indirect. They have no standing to sue. Doremus vs. Board of Education, 342 U.S. 429.

The plaintiffs Ortiz, Broadnax, Reyes and Sinkler have alleged no injury suffered as a result of the Penfield Zoning Ordinance or its administration. These plaintiffs have asserted no provision of the Penfield zoning ordinance nor any act of any defendant which violates the constitution or any federal statute. They have set forth no injury in fact. They have shown no connection between their grievances and the Penfield zoning ordinance or its administration. They have no standing to sue. Data Processing Service, Inc. vs. Camp. 397 U.S. 150.

The plaintiff Metro-Act of Rochester has alleged no facts to show its standing to sue. Sierra Club vs. Morton, 405 U.S. 727 (1972).

The plaintiffs have stated no claim or claims upon which relief can be granted under the equal protection clause or the due process clause of the Fourteenth Amendment. Euclid vs. Ambler Realty Co., 272 U.S. 365; Dandridge vs. Williams, 397 U.S. 471; James vs. Valtierra, 402 U.S. 137.

The plaintiffs have stated no claim or claims upon which relief can be granted under the First Amendment or the Ninth Amendment.

The plaintiffs have asserted no valid claim or claims for which relief can be granted under 42 U.S.C. Sections 1981, 1982 or 1983. They are not entitled to declaratory, injunctive, or monetary relief under those sections.

This suit should not be treated as a class action.

The plaintiffs have moved to add as a party plaintiff Housing Council in the Monroe County Area, Inc. Housing Council has no standing to sue. Sierra Club vs. Morton (supra).

Rochester Home Builders Association, Inc. has moved to intervene. This organization has no standing to sue. It has alleged no injury in fact. Even if it did have standing to sue, this court should, in the exercise of discretion, deny intervention, because to allow intervention would unduly delay or prejudice the adjudication of the rights of the original parties and would confuse the trial with collateral issues. Accordingly it is hereby

ORDERED that plaintiffs' motion to add as a party plaintiff Housing Council in the Monroe County Area, Inc., is denied. The motion of Rochester Home Builders Association, Inc. to intervene is denied. This action was improperly instituted as a class action. The complaint is dismissed for the reasons herein stated, with costs.

/s/ HAROLD P. BURKE
United States District Judge

December 27, 1972.

APPENDIX C

Constitutional and Statutory Provisions

A. *Constitutional Provisions*

1. The First Amendment provides:

   Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. The Ninth Amendment provides:

   The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

3. The first section of the Fourteenth Amendment provides:

   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . .

B. *Statutory Provisions*

1. 42 U.S.C. § 1981 provides:

   All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

2. 42 U.S.C. § 1982 provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

3. 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

APPENDIX D

§ 29-8. Residential AA District.

a. USES. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Residential "AA" District except for one or more of the following purposes:

1. One family dwelling.
2. Churches and similar places of worship.
3. Elementary, high schools, colleges, universities, public parks and public playgrounds.

4. Boarders and lodgers not to exceed two (2) in a one-family dwelling.

5. Customary agricultural operations, as the same are herein defined, but excluding within one hundred (100) feet of any lot line, any housing of poultry or stabling of livestock or storage of manure or other odor or dust-producing material.

6. Public library.

7. Municipal buildings or structures (including town, school and improvement or fire district).

b. ACCESSORY USES. The following accessory uses are permitted in a Residential "AA" District when located on the same lot with a permitted principal use:

1. Private garage, either attached or unattached to the principal structure.

2. Professional offices (when part of the personal residence of and used solely by professional persons) and customary home occupations conducted by the resident only and conducted in the principal building only. There shall be no evidence of such use other than an announcement or sign not to exceed two (2) square feet in area. Exterior alterations to the residence or principal building which change the essential character thereof for such use are prohibited.

3. **[Added 12-21-71, effective 1-10-72]** One (1) detached garage incorporating a single apartment overhead (carriage house), provided the following criteria are satisfied:

   (a) A maximum of two (2) bedrooms.

   (b) A minimum of six hundred (600) square feet of living area in a two-bedroom apartment.

   (c) A minimum of five hundred (500) square feet of living area in a one-bedroom apartment.

   (d) Minimum lot size of three (3) acres.

   (e) The owner of the lot resides thereon.

   (f) An independent private septic system approved by the appropriate health authorities, unless public sanitary sewers are available.

c. AREA OF STRUCTURES. No one-story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage, of not less than one thousand three hundred (1,300) square feet; no one-and-one-half-story residence or split level residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than one thousand four hundred (1,400) square feet; and no two-story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than one thousand five hundred (1,500) square feet.

d. MINIMUM SIZE LOTS. No structure shall be erected on a lot other than a corner lot unless such lot shall have a width of at least one hundred (100) feet at the building line, an average depth of at least two hundred (200) feet, and a total ground area of not less than twenty thousand (20,000) square feet. Corner lots shall have a width of at least one hundred twenty-five (125) feet at the building line, an average depth of at least two hundred (200) feet, and a total ground area of not less than twenty-five thousand (25,000) square feet. This provision shall not apply to lots appearing on any subdivision plat heretofore approved nor to any existing lot of smaller size. In no case, however, shall the size of the lot be smaller than the area necessary, where needed, for adequate and sufficient individual sewage disposal and/or the safe location of a potable water well, where needed.

e. YARDS. No church, school, or other permitted structure designed for public assembly or open to the public, hereafter erected, structurally altered, reconstructed or moved in a Residential "AA" District shall be nearer to any street line than one hundred (100) feet, whether front or side, and no such structure shall be nearer than one hundred (100) feet to any interior or rear lot line. Every other permitted structure hereafter

erected, structurally altered, reconstructed or moved in such District shall be no nearer to any street line, whether front or side, than is provided under the provisions of § 29-10 of this ordinance, and no such structure shall be nearer than ten (10) feet to any interior side or rear lot line. The purpose of this provision is to establish suitable side and rear yards.

§ 29.9 Residential "A" District.

a. USES. No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Residential "A" District except for one (1) or more of the following purposes:

1. All uses permitted in a Residential "AA" District, subject to all the use restrictions specified therefor in the provisions relating to said District.

2. Lodging or boardinghouses, where no more than four (4) persons are supplied with meals and/or lodging for hire. **[Amended 1-4-65]***

b. ACCESSORY USES. The following accessory uses are permitted in a Residential "A" District when located on the same lot with a permitted principal use:

1. Private garage, either attached or unattached to the principal structure.

2. Professional offices (when part of the personal residence of and used solely by professional persons) and customary home occupations conducted by the resident only and conducted in the principal building only. There shall be no evidence of such use other than an announcement or sign not to exceed two (2) square feet in area. Exterior alterations to the residence or principal building which change the essential character thereof for such use are prohibited.

* **Editor's Note: Amendment repealed 2 and renumbered this subsection from 3.**

3. **[Added 12-21-71, effective 1-10-72]** One (1) detached garage incorporating a single-apartment overhead (carriage house), provided the following criteria are satisfied:

   (a) A maximum of two (2) bedrooms.

   (b) A minimum of six hundred (600) square feet of living area in a two-bedroom apartment.

   (c) A minimum of five hundred (500) square feet of living area in a one-bedroom apartment.

   (d) Minimum lot size of two (2) acres.

   (e) The owner of the lot resides thereon.

   (f) An independent private septic system approved by the appropriate health authorities, unless public sanitary sewers are available.

c. AREA OF STRUCTURES. No one-story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than one thousand (1,000) square feet; no story-and-a-half or split level residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than one thousand two hundred (1,200) square feet; and no two-story residential structure shall be hereafter erected unless it shall contain a habitable area exclusive of open porch or attached garage of not less than one thousand three hundred (1,300) square feet.** **[Amended 1-4-65]**

d. MINIMUM SIZE LOTS. No structure shall be erected on other than a corner lot unless such lot shall have a width of at least one hundred (100) feet at the building line, an average depth of at least one hundred fifty (150) feet, and a total ground area of not less than fifteen thousand (15,000) square feet. Corner lots shall have a width of at least one hundred twenty-five (125) feet at the building line, an average depth of at least one hundred fifty (150) feet, and a total ground area of not less than eighteen thousand seven hundred fifty (18,750) square feet. This provision

** **Editor's Note: Eliminated last sentence which referred to size requirements.**

shall not apply to lots appearing on any subdivision plat heretofore approved nor to any legally existing lot of smaller size. In no case, however, shall the size of the lot be smaller than the area necessary for adequate and sufficient individual sewage disposal, and the safe location of a potable water well, where needed.

e. YARDS. No structure hereafter erected, structurally altered, reconstructed or moved in a Residential "A" District shall be nearer to any street line, whether front or side, nor to any interior or rear lot line than is provided under the provisions of § 29-8e of this ordinance.

§ 29-10. Front yards — Residential Districts.

For the purpose of establishing suitable front yards, no structure hereafter erected, structurally altered, reconstructed or moved in any residential district, shall be nearer to the center line of any highway than herein provided:

1. One hundred eight (108) feet from the center line of the highway of the following streets and highways:

(Cont'd on page 2915)

Atlantic Avenue
Browncroft Boulevard
Carter Road
Fairport-Nine Mile Point Road
Five Mile Line Road
Penfield Road
Plank Road
Salt Road

2. **[Added 8-3-64]**. Ninety (90) feet from the center line of the highway of the following streets and highways:

Baird Road, south of Penfield Road
Bay Road
Creek Street
Huber Road
Harris Road
Jackson Road
State Road
Watson Road
Whalen Road

3. **[Added 8-3-64]**. Eighty-three (83) feet from the center line of the highway of any street or highway not hereinabove specifically set forth.

4. **[Added 8-3-64]**. Nothing in the foregoing shall prohibit the construction of an addition to a lawfully existing residence, provided that such addition shall not be constructed nearer the center line of the highway than the existing residence, and provided that such addition shall not be in violation of any side- or rear-line setback requirement imposed by this ordinance.

§ 29-11. Apartment House or Multiple Dwelling District.

A. USES. No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any district designated on the Official Amended Zoning Map of the Town of Penfield as an Apartment-House or Multiple-Dwelling District, except for apartment houses and multiple dwellings as defined in § 29-6, Paragraph 2 of this ordinance and such accessory structures as are customarily incident to and used in connection with such main structure.

B. AREA OF STRUCTURES: No apartment house or multiple dwelling, as herein defined, shall be hereafter erected, or existing structure altered or reconstructed to become such, unless each unit thereof shall contain the following minimum habitable area:

Studio apartment (no bedroom)	500 square feet
One-bedroom apartment	600 square feet
Two-bedroom apartment	800 square feet
Three-bedroom apartment	950 square feet

C. MINIMUM LOT SIZE: **[Amended 9-7-65]** Every lot in said district shall contain a minimum of three thousand five hundred (3,500) square feet for each apartment living unit to be erected thereon, shall be of such size that the horizontal area of any structure or group of structures to be erected, or as it or they shall exist after alteration or remodeling, shall not occupy more than twenty-five per centum (25%) of the area of the lot. The horizontal area shall be the area determined by projecting the extreme lines of the structure vertically to a horizontal plane. The horizontal area of a group of structures located on the same lot shall be the combined areas of all buildings comprising the group.

D. YARDS: No structure hereafter erected, structurally altered, reconstructed or moved in said district shall be nearer

to any street line than the height of the building or buildings, and in no event nearer than eighty (80) feet. No structure not in excess of three (3) stories in height shall be nearer than twenty (20) feet to any interior side or rear lot line. No structure from four (4) to six (6) stories in height, inclusive, shall be nearer than thirty (30) feet to any interior side or rear lot line, and no structure seven (7) stories or more in height shall be nearer than forty (40) feet to any interior side or rear lot line. Where the rear or side lot line abuts any lot or land area in a residential district, such structure shall not be located closer than one hundred (100) feet from the line adjoining said residential district, and a fifty-foot strip immediately adjoining said residential district shall be maintained as a landscape buffer area. **[Amended 8-3-64]**

E. Off-street parking. All premises occupied by apartment houses or multiple dwellings in this district shall provide and maintain at the site of such structures and completely off the limit of any street or highway an improved and usable parking area of sufficient size to provide one and one-half (1½) parking spaces for each apartment or living unit to be contained in such structure, of which requirement one (1) such parking space per apartment or living unit shall be within an enclosed garage. All unenclosed parking areas shall be screened from adjacent properties.

§ 29-11.1. Townhouse Dwelling District. [Added 6-2-69]

A. Definition. Townhouses are defined as buildings or dwelling groups containing individual single-family units permitting separation of such family groups by a party wall. **[Amended 8-7-72, effective 8-28-72]**

B. Uses. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Amended Zoning Map of the Town of Penfield as a Townhouse Dwelling District, except for townhouses as herein defined and such accessory structures as are herein enumerated.

C. Townhouses. No townhouse or clusters of townhouses as herein defined shall be hereafter erected or existing structures altered or reconstructed to become such except in accordance with the following criteria:

1. Density limitation. The overall density shall not exceed nine (9) dwelling units per acre.

2. Area requirements.

   a) Lot size. No dwelling shall be erected on a parcel of land that has less than eighteen (18) feet of frontage. **[Amended 3-5-73, effective 5-26-73]**

   b) Front yard setbacks. No building or part thereof shall be erected or altered in this district that is nearer the private street center line upon which it fronts than forty-five (45) feet.
   No building or part thereof shall be erected or altered in this district that is nearer than sixty (60) feet to the center line of a public or dedicated road upon which it fronts.
   If any building erected in this district faces a public or dedicated road the opposite side of which is either an AA or A Residential District, the front yard setback shall be that which is required by the Residential District.

   c) Side yard setbacks. A side yard setback of thirty-five (35) feet is required from the center line of a private road on each corner lot and sixty (60) feet from the center line of a public road or dedicated road. No side yards shall be required of interior lots having a common wall. A side yard setback of at least equal to the height of the highest adjacent building and no less than twenty (20) feet shall be required between building groups.

   d) Rear setback. A setback of at least thirty (30) feet from any other structure or any external boundary line is required on each lot.

3. Height limitations. No building shall exceed two and one-half (2½) stories nor shall any building exceed thirty-five (35) feet in height, except for permitted accessory structures as approved by the Planning Board as hereinafter provided.

4. Parking requirements. A minimum of two (2) parking spaces shall be provided for each dwelling unit, one (1) of which shall be completely enclosed and covered.

5. Specific requirements.

   a) Unit size. No townhouse dwelling unit shall be constructed, altered or reconstructed unless it shall contain a minimum of one thousand (1,000) square feet of habitable area and be not less than eighteen (18) feet in width. **[Amended 8-7-72, effective 8-28-72]**

   b) There shall be no more than eight (8) individual townhouse units within each building or dwelling group.

   c) The main structures and all accessory buildings shall not occupy more than twenty-seven percent (27%) of the gross acreage as shown on the site plan.

6. Permitted accessory structures and uses. The following accessory uses and structures are permitted subject to the approval by the Planning Board of the site plan and as hereinafter provided:

   a) Private garages.

   b) Group swimming pools, subject to provisions of § 29-20.1 of this ordinance, except that any pool proposed as an integral part of a townhouse project may be approved and a permit issued by the Planning Board as a part of its site plan approval.

   c) Parks, playgrounds and play areas to include structural facilities incidental to recreational areas, such as rest rooms, bathhouses and clubhouses, which facilities are limited to those that are publicly owned or operated not for profit for the benefit of the townhouse owners of the district or a part thereof.

   d) Maintenance buildings.

7. Site plan requirements. The site plan submitted for review, pursuant to § 29-15, Paragraph 11, of this ordinance, shall include the following items:

   a) Topography, including existing and proposed contours.

   b) Proposed street system for both public and private streets.

c) Proposed reservation for parks, playgrounds, recreational areas and other open spaces.

d) Off-street parking spaces.

e) Types of dwellings and portions of the area proposed therefor.

f) Locations of all structures and parking spaces, including number of parking spaces.

g) A tabulation of the total number of acres in the proposed project and a percentage thereof designated for the proposed dwelling types, and total ground coverage.

h) A tabulation of overall density per gross acres.

i) Preliminary plans and elevations of the several dwelling types.

(Cont'd on page 2916.5)

j) Location and size of driveways.

k) Type and location, size and number of all plantings

l) All grassed areas.

m) All sidewalk areas.

n) Type and size of fences or hedges.

o) Design of the proposed buildings including types of finishes on exteriors.

p) Provisions for disposal of rubbish.

q) Location of all buildings on site to include distance from lot lines.

r) Location and sizes of signs, if any.

s) Exterior lighting, if any.

§ 29-11.20. Planned Unit Development District. [Added 6-1-70; effective 6-21-70]

A. Intent. It is the intent of the Planned Unit Development (PUD) Article (§§ 29-11.20 through 29-11.25) to provide flexible land use and design regulations through the use of performance criteria so that small- to large-scale neighborhoods or portions thereof may be developed within the town that incorporate a variety of residential types and nonresidential uses, and contain both individual building sites and common property which are planned and developed as a unit. Such a planned unit is to be designed and organized so as to be capable of satisfactory use and operation as a separate entity without necessarily needing the participation of other building sites or other common property in order to function as a neighborhood. This Article specifically encourages inno-

vations in residential development so that the growing demands for housing at all economic levels may be met by greater variety in type, design and siting of dwellings and by the conservation and more efficient use of land in such developments.

This Article recognizes that the standard zoning function (use and bulk) and the subdivision function (platting and design) are appropriate for the regulation of land use in areas or neighborhoods that are already substantially developed, but that PUD techniques for land development may be more appropriate in areas of the town that are not already substantially developed. This Article recognizes that a rigid set of space requirements along with bulk and use specifications would frustrate the application of the PUD concept. Thus, where PUD techniques are deemed appropriate through the rezoning of land to a PUD District by the Town Board, the set of use and dimensional specifications elsewhere in this ordinance is herein replaced by approval process in which an approved plan becomes the basis for continuing land-use controls. Consequently, where the provisions of §§ 29-3, 29-8, 29-9, 29-10, 29-11, 29-11.1, 29-12, 29-15, 29-20 and 29-20.1 of the amended Zoning Ordinance are inconsistent with the provisions of this section, the provisions of this section shall prevail.

B. Objectives. In order to carry out the intent of this Article, a PUD shall achieve the following objectives:

(1) A maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), types of housing, lot sizes and community facilities available to existing and potential town residents at all economic levels.

(2) More usable open space and recreation areas.

(3) More convenience in location of accessory commercial and service areas.

(4) The preservation of trees, outstanding natural topography and geologic features and prevention of soil erosion.

(5) A creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.

(6) An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs.

(7) A development pattern in harmony with the objectives of the Master Plan.

(8) A more desirable environment than would be possible through the strict application of other Articles of this ordinance.

§ 29-11.21. General requirements for Planned Unit Developments. [Added 6-1-70; effective 6-21-70]

A. Minimum area. Under normal circumstances, the minimum area required to qualify for a PUD District shall be one hundred (100) contiguous acres of land. Where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this Article, the Planning Board may consider projects with less acreage.

B. Ownership. The tract of land for a project may be owned, leased or controlled either by a single person or corporation, or by a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the Approved Plan shall be binding on all owners.

C. Location of PUD District. The PUD District shall be applicable to any area of the town where the applicant can

demonstrate that the characteristics of his holdings will meet the objectives of this Article.

D. Permitted uses. All uses within an area designated as a PUD District are determined by the provisions of this section and the approved plan of the project concerned.

(1) Residential uses. Residences may be of any variety of types. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this Article. To insure a variety of types of residences, to prevent overcrowding, to encourage adequate light and air space for fire protection, the following criteria shall be met:

(a) A minimum of ten percent (10%) by acreage shall contain single-family detached dwellings having the following minimum square feet of habitable area exclusive of open porch or attached garage:

1	story	1,300 square feet
1½	story	1,400 square feet
2	story	1,500 square feet

Side and rear setbacks shall conform to § 29-8 of this ordinance.

Average density shall not exceed two (2) dwelling units per acre.

(b) A minimum of fourteen percent (14%) by acreage shall contain single-family detached dwellings having the following square feet of habitable area exclusive of open porch or attached garage:

1	story	1,000 - 1,300 square feet
1½	story	1,200 - 1,400 square feet
2	story	1,300 - 1,500 square feet

Side and rear setbacks shall conform to § 29-8 of this ordinance. Average density shall not exceed three (3) dwelling units per acre.

(c) A minimum of seven percent (7%) by acreage shall contain single-family detached or double homes for sale.

Single-family detached homes shall have the following square feet of habitable area exclusive of open porch or attached garage:

1	story	800 - 900 square feet
1½	story	1,000 - 1,100 square feet
2	story	1,100 - 1,200 square feet

Double homes for sale shall have a minimum habitable area of nine hundred (900) square feet per dwelling unit.

Side and rear setbacks under this subsection shall conform to § 29-8 of this ordinance. Average density shall not exceed four (4) dwelling units per acre.

(d) A maximum of thirty percent (30%) by acreage may contain single-family detached dwellings having the following square feet of habitable area exclusive of open porch or attached garage:

1	story	850 - 1,000 square feet
1½	story	1,050 - 1,200 square feet
2	story	1,150 - 1,300 square feet

No structure hereon shall be nearer than eight (8) feet to any interior side or rear lot line. Average density shall not exceed three (3) dwelling units per acre.

(e) A maximum of twenty-seven percent (27%) by acreage may contain multiple dwellings.

The habitable area of dwelling units shall conform to the requirements of Paragraph B of § 29-11 of this ordinance.

The horizontal area of all structures including garages shall not occupy more than twenty percent (20%) of the land area allocated to the multiple dwelling portion of the PUD.

Each dwelling unit shall have two (2) adequate parking spaces, one (1) of which shall be within an enclosed garage.

Average density shall not exceed nine (9) dwelling units per acre for town houses and twelve (12) dwelling units per acre for apartments.

The setback for structures from any street shall be as prescribed in Subparagraph (f) herein.

There shall be a distance between multiple-dwelling buildings not less than the height of the tallest building.

(f) Front setbacks shall be based on the function of the streets. For state and county highways or major town roads, no building unit shall be closer than one hundred (100) feet from the highway line; for internal subdivision streets that function as collectors and feeders to major roads, no building unit shall be closer than fifty (50) from the street line; and on purely internal streets, no building unit shall be closer than thirty (30) feet from the street line.

(g) In all residential areas, the acreage allocated to the various types of residential uses shall include all streets and highways therein, including one-half (½) the width of any abutting street or highway.

(2) Accessory commerical and service uses. For those developments in excess of one hundred (100) acres, commercial and service uses, not to exceed two percent (2%) of the total acreage, may be permitted where such uses are scaled primarily to serve the residents of the PUD.

(3) Customary accessory or associated uses, such as private garages, storage spaces, recreational and community activities, churches and schools, shall also be permitted or required as appropriate to the PUD.

(4) A minimum of ten percent (10%) by acreage shall be set aside for recreational use. Such land must be usable for recreation, such as, but not limited to: picnic areas, playgrounds, hiking trails, ball parks and community centers, and shall be in addition to other open space consisting of areas unsuitable for any use and which by its nature must be left in its natural state for conservation purposes.

(5) Notwithstanding the several average-density limitations hereinabove provided, the average density for the entire PUD shall not exceed four (4) dwelling units per acre. [Added 9-7-71]

(6) As a further standard and limitation on the permitted uses within a PUD District, the ratio of multiple-dwelling units and duplex (two-family) units to single-family detached dwelling units shall not exceed one (1) for one (1). [Added 9-7-71]

E. Common property in the PUD. Common property in a PUD is a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvement, operation and maintenance of such common property and facilities, including private streets, drives, service and parking areas and recreational and open space areas.

F. Waiving of requirements. **[Added 5-7-73, effective 5-26-73]**

(1) The general requirements for Planned Unit Developments hereinabove provided may be waived by the Planning Board in making a favorable report to the Town Board on an application for sketch plan approval as provided by § 29-11.22B(3) when, in the Planning Board's judgment, an applicant has successfully borne the burden of proof that his proposal is in the public interest and provides for flexibility in the use of the land and meets the specific performance criteria which a reasonable person might apply, and when, in the Planning Board's judgment, a specific proposed Planned Unit Development, as described by a sketch plan and other information, is clearly consonant with the intent and objectives of the Article as stated in Section 29-11.20A and B. The Planning Board in making such a favorable report, however, shall call to the Town Board's attention its use of the provisions of Subsection F, in lieu of any and all other general requirements, which may be imposed by § 29-11.21A through E.

(2) The Town Board, in granting a Planned Unit Development district zoning, may waive the same general requirements if in its judgment such waiving serves the public interest.

(3) The Planning Board may waive such general requirements in granting either or both preliminary and final approval of a Planned Unit Development site plan.

§ 29-11.22. Planned Unit Development application procedure and zoning-approval process. [Added 6-1-70; effective 6-21-70]

A. General. Whenever any PUD is proposed, before any permit for the erection of a permanent building in such PUD shall be granted, and before any subdivision plat of any party thereof may be filed in the office of the Monroe County Clerk, the developer or his authorized agent shall apply for and secure approval of such PUD in accordance with the following procedures:

B. Application for sketch plan approval.

(1) In order to allow the Planning Board and the developer to reach an understanding on basic design requirements prior to detailed design investment, the developer shall submit a sketch plan of his proposal to the Planning Board. The sketch plan shall be approximately to scale, though it need not be to the precision of a finished engineering drawing; and it shall clearly show the following information:

(a) The location of the various uses and their areas in acres.

(b) The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private.

(c) Delineation of the various residential areas indicating for each such area its general extent, size and composition in terms of total number of dwelling units, approximate percentage allocation by dwelling unit type (i.e., single-family detached, duplex, townhouse, garden apartments, high-rise), and general description of the intended market structure (i.e., luxury, middle-income, moderate-income, elderly units, family units, etc.), plus a calculation of the residential density in dwelling units per gross acre (total area including interior roadways) for each such area.

(d) The interior open-space system.

(e) The overall drainage system.

(f) If grades exceed three percent (3%), or portions of the site have a moderate-to-high susceptibility to erosion, or a moderate-to-high susceptibility to flooding and ponding, a topographic map showing contour intervals of not more than five (5) feet of elevation shall be provided, along with an overlay outlining the above susceptible soil areas, if any.

(g) Principal ties to the community at large with respect to transportation, water supply and sewage disposal.

(h) General description of the provision of other community facilities, such as schools, fire protection services and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated.

(i) A location map showing uses and ownership of abutting lands.

(2) In addition, the following documentation shall accompany the sketch plan:

(a) Evidence of how the developer's particular mix of land uses meets existing community demands.

(b) Evidence that the proposal is compatible with the goals of the official Master Plan.

(c) General statement as to how common open space is to be owned and maintained.

(d) If the development is to be staged, a general indication of how the staging is to proceed. Whether or not the development is to staged, the sketch plan of this section shall show the intended total project.

(e) Evidence of any sort in the applicant's own behalf to demonstrate his competence to carry out the plan and his awareness of the scope of such a project, both physical and financial.

(3) The Planning Board shall review the sketch plan and its related documents, and shall render either a favorable report to the Town Board or an unfavorable report to the applicant. The Planning Board may call upon the County Planning Council, the Soil Conservation Service, and any other public or private consultants that they feel are necessary to provide a sound review of the proposal.

(a) A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering PUD districting. It shall be based on the following findings which shall be included as part of the report:

[1] The proposal conforms to the Master Plan.

[2] The proposal meets the intent and objectives of PUD as expressed in § 29-11.20.

[3] The general proposal meets all the general requirements of § 29-11.21, Subsections A through E; and/or the Board may consider such proposal in accordance with the provisions of Subsection F of § 29-11.21. **[Amended 5-7-73, effective 5-26-73]**

[4] The proposal is conceptually sound in that it meets a community need and it conforms to accepted design principles in the proposed functional roadway system, land use configuration, open space system, drainage system and scale of the elements, both absolutely and to one another.

[5] There are adequate services and utilities available or proposed to be made available in the construction of the development.

(Cont'd on page 2916.15)

(b) An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what might be necessary in order to receive a favorable report. The applicant may, within ten (10) days after receiving an unfavorable report, file an application for PUD districting with the Town Clerk. The Town Board may then determine on its own initiative whether or not it wishes to call a public hearing.

(4) The Chairman of the Planning Board shall certify when all of necessary application material has been presented, and the Planning Board shall submit its report within sixty (60) days of such certification. If no report has been rendered after sixty (60) days, the applicant may proceed as if a favorable report were given to the Town Board.

C. Application for PUD districting.

(1) Upon receipt of a favorable report from the Planning Board, or upon its own determination subsequent to an appeal from an unfavorable report, the Town Board shall set a date and conduct a public hearing for the purpose of considering PUD districting for the applicant's plan, in accordance with the procedures established under §§ 264 and 265 of the Town Law or other applicable law, said public hearing to be conducted within forty-five (45) days of the receipt of the favorable report or the decision of an appeal from an unfavorable report.

(2) The Town Board shall refer the application to the County Planning Council for its analysis and recommendations, and the Town Board shall also refer the application to the Town Engineer for his review.

(a) The Town Board shall give the County Planning Council at least thirty (30) days to render its

report, and within forty-five (45) days after the public hearing, the Town Board shall render its decision on the application.

(b) The Town Engineer shall submit a report to the Town Board within thirty (30) days of the referral duly noting the feasibility and adequacy of those design elements under his sphere of interest. This report need only concern itself with general conceptual acceptance or disapproval, as the case may be, and in no way implies any future acceptance or rejection of detailed design elements as will be required in the later site-plan review stage. The Town Engineer may also state in his report any other conditions or problems that must be overcome before consideration of acceptance on his part.

D. Zoning for Planned Unit Developments.

(1) If the Town Board grants the PUD districting, the Zoning Map shall be so notated. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, visual and acoustical screening, land-use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services, such as schools, fire houses and libraries, protection of natural and/ or historic sites, and other such physical or social demands.

(2) PUD districting shall be conditioned upon the following:

(a) Securing of final site-plan approval in accordance with the procedures set forth in § 29-11.23.

(b) Compliance with all additional conditions and requirements as may be set forth by the Town Board in its resolution granting the PUD District.

§ 29-11.23. Site plan approval process for Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

A. Application for preliminary site plan approval. Application for preliminary site plan approval shall be to the Planning Board and shall be accompanied by the following information prepared by a licensed engineer, architect and/or lanscape architect:

(1) An area map showing applicant's entire holding, that portion of the applicant's property under consideration, and all properties, subdivision, streets and easements within five hundred (500) feet of applicant's property

(2) A topographic map showing contour intervals of not more than one (1) foot of elevation shall be provided.

(3) A preliminary site plan including the following information:

(a) Title of drawing, including name and address of applicant.

(b) North point, scale and date.

(c) Boundaries of the property plotted to scale.

(d) Existing watercou s.

(e) A site plan showing location, proposed use and height of all buildings; location of all parking and truck-loading areas, with access and egress drives thereto; location and proposed development of all open spaces including parks, playgrounds and open reservations; location of outdoor storage, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; description of method of sewage disposal and location of such facilities; location and size of all signs; location and proposed development of buffer areas; location and design of lighting facilities; and the amount of building area proposed for nonresidential uses, if any.

(4) A tracing overlay showing all soil areas and their classifications, and those areas, if any, with moderate to high susceptibility to flooding, and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation.

B. Factors for consideration. The Planning Board's review of a preliminary site plan shall include, but is not limited to, the following considerations:

(1) Adequacy and arrangement of vehicular-traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.

(2) Adequacy and arrangement of pedestrian-traffic access and circulation including: separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience.

(3) Location, arrangement, appearance and sufficiency of off-street parking and loading.

(4) Location, arrangement, size and design of buildings, lighting and signs.

(5) Relationship of the various uses to one another and their scale.

(6) Adequacy, type and arrangement of tree, shrubs and other landscaping constituting a visual and/or a noise-deterring buffer between adjacent uses and adjoining lands.

(7) In the case of apartment houses or multiple dwellings, the adequacy of usable open space for playgrounds and informal recreation.

(8) Adequacy of storm water and sanitary waste-disposal facilities.

(9) Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.

(10) Protection of adjacent properties against noise, glare, unsightliness or other objectionable features.

(11) Conformance with other specific charges of the Town Board which may have been stated in the zoning resolution.

In its review the Planning Board may consult with the Town Engineer and other town and county officials, as well as with representatives of federal and state agencies, including the Soil Conservation Service and the New York State Department of Conservation. The Planning Board may require that exterior design of all structures be made by, or under the direction of, a registered architect whose seal shall be affixed to the plans. The Planning Board may also require such additional provisions and conditions that appear necessary for the public health, safety and general welfare.

C. Action on preliminary site plan application. Within ninety (90) days of the receipt of the application for preliminary

site plan approval, the Planning Board shall act on it. If no decision is made within said ninety-day period, the preliminary site plan shall be considered conditionally approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is conditionally approved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report.

The Planning Board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan, of which conformance with shall be considered a condition of approval. Such recommendations shall be considered a condition of approval. Such recommendations shall be limited, however, to siting and dimensional details within general use areas, and shall not significantly alter the sketch plan as it was approved in the zoning proceedings.

If the preliminary site plan is disapproved, the Planning Board's statement shall contain the reasons for such findings. In such case, the Planning Board may recommend further study of the site plan and resubmission of the preliminary site plan to the Planning Board after it has been revised or redesigned.

No modification of existing stream channels, filling of lands with a moderate to high susceptibility to flooding, grading or removal of vegetation in areas with moderate to high susceptibility to erosion, or excavation for and construction of site improvements shall begin until the developer has received preliminary site plan approval. Failure to comply shall be construed as a violation of the Zoning Ordinance and, where necessary, final site plan approval may require the modification or removal of unapproved site improvements.

D. Request for changes in sketch plan. If in the site plan development it becomes apparent that certain elements of

the sketch plan, as it has been approved by the Town Board, are unfeasible and in need of significant modification, the applicant shall then present his solution to the Planning Board as his preliminary site plan, in accordance with the above procedures. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the zoning resolution. If a negative decision is reached, the site plan shall be considered as disapproved. The developer may then, if he wishes, produce another site plan in conformance with the approved sketch plan. If an affirmative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reasons for feeling the project should be continued as modified. Preliminary site plan approval may then be given only with the consent of the Town Board.

E. Application for final detailed site plan approval. After receiving conditional approval from the Planning Board on a preliminary site plan, and approval for all necessary permits and curb cuts from state and county officials, the applicant may prepare his final detailed site plan and submit it to the Planning Board for final approval; except that if more than twelve (12) months have elapsed between the time of the Planning Board's report on the preliminay site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.

The final detailed site plan shall conform substantially to the preliminary site plan that has received preliminary site plan approval. It should incorporate any revisions or other features that may have been recommended by the Planning Board and/or the Town Board at the preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.

F. Action on the final detailed site plan application. Within sixty (60) days of the receipt of the application for final site plan approval, the Planning Board shall render a decision to the applicant and so notify the Town Board. If no decision is made within the sixty-day period, the final plan shall be considered approved.

(1) Upon approving an application, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Building Inspector, who shall then issue a building permit to the applicant if the project conforms to all other applicable requirements.

(2) Upon disapproving an application, the Planning Board shall so inform the Building Inspector. The Planning Board shall also notify the applicant and the Town Board in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.

G. Staging. If the applicant wishes to stage his development, and he has so indicated, then he may submit only those stages he wishes to develop for site plan approval, in accordance with his staging plan. Any plan which requires more than twenty-four (24) months to be completed shall be required to be staged, and a staging plan must be developed. At no point in the development of a PUD shall the ratio of nonresidential to residential acreage or the dwelling unit ratios between the several different housing types for that portion of the PUD completed and/or under construction differ from that of the PUD as a whole by more than twenty percent (20%).

§ 29-11.24. Other regulations applicable to Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

A. Regulation after initial construction and occupancy. For the purpose of regulating and development and use of property after initial construction and occupancy, any changes other than use changes shall be processed as a special permit request to the Planning Board. Use changes shall also be in the form of a request for special permit except that Town Board approval shall be required. It shall be noted, however, that properties lying in PUD Districts are unique and shall be so considered by the Planning Board or Town Board when evaluating these requests, and maintenance of the intent and function of the planned unit shall be of primary importance.

B. Site-plan review. Site-plan review under the provisions of this Article shall suffice for Planning Board review of subdivision under town subdivision regulations, subject to the following conditions:

(1) The developer shall prepare sets of subdivision plats suitable for filing with the office of the Monroe County Clerk in addition to those drawings required above.

(2) The developer shall plat the entire development as a subdivision; however, PUD's being developed in stages may be platted and filed in the same stages.

(3) Final site-plan approval under § 29-11.23F shall constitute final plat approval under the town subdivision regulations, and provisions of § 276 of the Town Law requiring that the plat be filed with the Monroe County Clerk within ninety (90) days of approval shall apply.

§ 29-11.25. Financial responsibility for construction in Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

No building permits shall be issued for construction within a PUD District until improvements are installed or performance bond posted in accordance with the same procedures as provided for in § 277 of the Town Law relating to subdivisions. The Town Board may require other proof of financial responsibility of the developer so as to insure completion of each phase of any development.

§ 29-11.30. Multiple dwellings for the elderly.
[Added 7-6-71, effective 8-1-71]

The Town Board may, on special application, issue a permit for the construction and maintenance of multiple dwellings for the elderly, as hereinafter defined, in any district of the town except Residential "AA" District.

A. "Multiple dwelling for the elderly" is defined as a building or a group of buildings whose primary purpose is to house one (1) or more persons of the age of sixty (60) years or more in independent living accommodations, but not including independent kitchen and dining facilities. Central kitchen and dining facilities to permit the congregate feeding of the residents are a required part of the concept. The following accessory facilities may be included within the structure or structures: Hobby shop, game rooms, library, meeting rooms, health center.

B. No such permit shall be issued until the application has been referred to the Planning Board for a recommendation. Prior to recommending the issuance of such permit, the Planning Board shall find after public notice and hearing that:

(1) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.

(2) The proposed use would not endanger or tend to endanger public health, safety, morals or general welfare of the community. In making such determination, the Board shall consider: lot areas; necessity for and size of buffer zones; type of construction; parking facilities; traffic hazards; fire hazards; offensive odors, smoke, fumes, noise and lights; the general character of the neighborhood; the availability of public sewers; the nature and use of other premises and the location and use of other buildings in the vicinity; and whether or not the proposed use will be detrimental to neighborhood property.

(3) The proposed use will be in harmony with the probable future development of the neighborhood and will not discourage the appropriate development and use of adjacent lands and buildings or impair the value thereof.

C. After receiving the recommendation of the Planning Board, the Town Board may grant such a permit, or refuse to grant the same, as hereinafter provided:

(1) If the Planning Board has recommended the granting of the permit, the Town Board may grant the same forthwith.

(2) If the Planning Board has recommended the denial of the permit, the Town Board may deny the same forthwith.

(3) If the Planning Board has recommended the granting of the permit, the Town Board may deny the same after public notice and hearing.

(4) If the Planning Board has recommended the denial of the permit, the Town Board may grant the same after public notice and hearing, and after making the findings provided in Paragraph B of this section.

D. In granting such a permit the Town Board may attach such conditions and limitations as it considers desirable in order to assure compliance with the application and the purposes of this ordinance.

E. Subject to the payment of the annual renewal fee, as hereinafter provided, any such permit granted hereunder shall be deemed to be indefinitely extended; provided, however, that it shall expire if the special use shall be terminated, abandoned or cease for more than six (6) months for any reason, or if there is a default in the payment of the renewal fee; and further provided that it may be revoked by the Town Board after due hearing on not less than ten (10) days' notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

F. The Town Clerk of the Town of Penfield shall issue a permit to the applicant upon a proper resolution by the Town Board and the payment of a fee of one hundred dollars ($100.) and shall issue a renewal annually thereafter in January of each year upon payment of a like fee.

Supreme Court, U. S.
FILED
NOV 29 1974
MICHAEL RODAK, JR., CLERK

APPENDIX
(Vol. I — Page 1 to 516)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1974

No. 73-2024

ROBERT WARTH, et al,

Petitioners,

—*v*—

IRA SELDIN, et al,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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Petition For Certiorari, Filed July 15, 1974
Certiorari, Granted October 15, 1974

SPAULDING LAW PRINTING CO., SYRACUSE, N. Y.

(S. 6937)

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DOCKET ENTRIES

January 24, 1972	Complaint Filed
April 6, 1972	Notice of Motion and supporting Affidavit to Dismiss Complaint Filed
May 2, 1972	Notice of Motion, Motion and supporting Affidavit of Rochester Home Builders Association, Inc. to Intervene as Party Plaintiff Filed
June 7, 1972	Plaintiffs' Notice of Motion and Motion for an Order making Housing Council in the Monroe County Area, Inc. a Party Plaintiff Filed
June 12, 1972	Plaintiffs' Affidavit of Robert J. Warth Filed
June 12, 1972	Plaintiffs' Affidavit of Andalino Ortiz Filed
June 12, 1972	Plaintiffs' Affidavit of Clara Broadnax Filed
June 12, 1972	Plaintiffs' Affidavit of Angela Reyes Filed
June 12, 1972	Plaintiffs' Affidavit of Rosa Sinkler Filed
June 12, 1972	Plaintiffs' Affidavit of Robert Warth, Lynn Reichert, Victor Vinkey and Katherine Harris Filed

DOCKET ENTRIES

June 12, 1972 Plaintiffs' Affidavit of Ann McNabb Filed

June 12, 1972 Plaintiffs' Affidavit of Christian G. King, Alan J. Taddiken and Richard C. Farley Filed

December 29, 1972 Order dismissing Complaint, denying Plaintiffs' Motion to add as Party Plaintiff Housing Council in Monroe County Area, Inc. and denying Motion of Rochester Home Builders Association, Inc. to intervene Filed

January 24, 1973 Plaintiffs' Notice of Appeal Filed

January 26, 1973 Notice of Appeal of Rochester Home Builders Association, Inc. Filed

August 16, 1974 Opinion and certified copy of Second Circuit Court of Appeals Order affirming Order of District Court Filed

October 15, 1974 Petition For Certiorari Granted

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, 265 Castlebar Road, Rochester, New York 14610, Individually and on behalf of all other persons similarly situated,
LYNN REICHERT, 224 Seneca Parkway, Rochester, New York 14613, Individually and on behalf of all other persons similarly situated,
VICTOR VINKEY, 134 Nunda Boulevard, Rochester, New York, 14610, Individually and on behalf of all other persons similarly situated,
KATHERINE HARRIS, 108 Garson Avenue, Rochester, New York, Individually and on behalf of all other persons similarly situated,
ANDELINO ORTIZ, R.D. 1 Wrights Road, Box 202, Wayland, New York, Individually and on behalf of all other persons similarly situated,
CLARA BROADNAX, 87 Jefferson Avenue, Rochester, New York, Individually and on behalf of all other persons similarly situated,
ANGELEA REYES 378

COMPLAINT

Scio Street, Rochester, New York, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Apartment 5-F, 10 Vienna Street, Rochester, New York, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC., 277 Goodman Street North, Rochester, New York,

Plaintiffs,

vs.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of

the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK

Defendants.

Plaintiffs, above named, by their attorneys, Robinson, Williams, Robinson and Angeloff, as and for their complaint against the defendants, allege:

FIRST That this is an action for declaratory judgment, injunctive relief and money damages pursuant to Title 42 USC 1981, 1982, and 1983 and pursuant to Title 28 USC 2201 and for damages and other relief based upon certain pendant and ancillary common law and statutory causes of action. Jurisdiction is conferred upon this Court by Title 28 USC 1331, 1343, and 2201. In addition the Court has pendant and ancillary jurisdiction over several causes

of action herein contained.

SECOND: That now and at all times hereinafter mentioned, the plaintiffs, Vinkey, Reichert, Warth, Harris are and were citizens of the United States of America and of the State of New York and are and were residents of the City of Rochester, a municipal corporation existing by virtue of the laws of the State of New York and within the territorial limits of said state, and said plaintiffs are and were the owners of real property lying within the territorial limits of said municipality and they are and were taxpayers of said municipality being liable to and for the payment of taxes and having paid taxes to said city, including real property taxes with rates and amounts based upon the assessed valuation of

their real estate lying within said municipal limits. In addition, the plaintiff Harris is a negro person who is denied certain rights by virtue of her race all as is more hereinafter set forth.

THIRD: Plaintiffs, property owners and taxpayers of the City of Rochester, are aggrieved in that they are paying a greater proportionate share of real estate taxes to the City of Rochester than are other residents of the Rochester metropolitan area to their respective towns because the City of Rochester has and must continue to permit more than its fair share of tax abated housing projects within its territorial limits to meet the low and moderate income housing requirements of the metropolitan Rochester area by reason of the

exclusionary practices of defendants.

FOURTH: That now and at all times hereinafter mentioned, the plaintiff Ortiz is and was a citizen of the United States of America and of the State of New York and is and was a resident of Wayland, New York, and said Ortiz is and was the owner of real property lying within the territorial limits of the City of Rochester, a municipal corporation existing by virtue of the laws of the State of New York and within the territorial limits of the State, and he is and was a taxpayer of the municipality of Rochester, New York, being liable to and for the payment of taxes and having paid taxes to said city, including real property taxes with rates and amounts based upon the assessed valuation of his real estate lying within said

municipal limits. In addition, plaintiff Ortiz as a citizen of Spanish/Puerto Rican extraction is denied certain rights by virtue of his race all as is more fully hereinafter set forth. Plaintiff Ortiz is employed in the Town of Penfield, New Yorkbut has been excluded from living near his employment as he would desire by virtue of the illegal, unconstitutional and exclusionary practices of the Town of Penfield as more particularly set forth.

FIFTH: That now and at all times hereinafter mentioned, the plaintiffs Broadnax, Reyes and Sinkler are and were citizens of the United States of America and the State of New York and are and were residents of the City of Rochester, New York, and are persons fitting within the classification of low and moderate income as hereinafter defined who solely

by reason of their existing in said classification are and were deprived of certain rights as hereinafter set forth.

SIXTH: That now and at all times hereinafter mentioned, the plaintiff Metro-Act of Rochester, Inc. is and was a non-profit corporation organized pursuant to the laws of the State of New York with its principal office located in the City of Rochester, New York. Metro-Act of Rochester, Inc. is a non-profit corporation with its main purpose being to alert ordinary citizens to problems of social concern; one effort of the corporation has been to inquire into the reasons for the critical housing shortage for low and moderate income persons in the Rochester area and to urge action on the part of citizens to alleviate the general housing shortage for low and moderate

income persons.

SEVENTH: Plaintiffs bring this action on their own behalf and on behalf of other persons similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The classes which plaintiffs represent are composed of all taxpayers of the City of Rochester, all low and moderate income persons residing in the City of Rochester, all black and/or Puerto Rican/Spanish citizens residing in the City of Rochester and all persons employed but excluded from living in the Town of Penfield who are affected or may in the future be affected by the defendants' policies and practices complained of herein. Plaintiffs and the classes they represent have been and continue to be discriminated against because of their race and income level in ways

which deprive them of the right to residential housing, low and moderate income multiple unit housing, and land use opportunities equal to those enjoyed by residents of the Town of Penfield. These persons are so numerous that joinder of all parties is impracticable. A common relief is sought. The interests of the classes are adequately represented by plaintiffs. Defendants have acted or refused to act on grounds applicable to said classes.

EIGHTH: That now and at all times hereinafter mentioned, the defendants Ira Seldin, Chairman, James O. Horne, Malcolm M. Nulton, Albert Wolf and John Betlem are and were the members and do now constitute the Zoning Board of the Town of Penfield as constituted and existing pursuant to Chapter 29 of the

Town Code of the Town of Penfield, New York, adopted by the Town Board of said Town on the 5th day of May, 1962 and subsequently, and the defendant Ira Seldin is now and was at all times hereinafter mentioned the Chairman of said Zoning Board and as such said defendants are and were in charge of and/or had authority over the administration of a certain zoning ordinance of said Town of Penfield, all as is more fully hereinafter set forth and of granting variances and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they and their predecessors participated in and were responsible for the activities, actions, events and circumstances hereinafter set forth.

NINTH: That now and at all times

hereinafter mentioned, the defendants, James Hartman, John D. Williams, Richard C. Ade and Timothy Westbrook are and were the members and do now constitute the Planning Board of the Town of Penfield, and the defendant George Shaw is now and was at all times hereinafter mentioned the Chairman of said Planning Board and as such said defendants and their predecessors in office are and were in charge of and/or had authority over the processing, administration, and approval of certain low and moderate income housing applications in the Town of Penfield, all as is more fully set forth herein and of granting planning approval and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they participated in and were responsible for the activities, actions and events and circumstances hereinafter set forth.

TENTH: That now and at all times hereinafter set forth, the defendants, Irene Gossin, Supervisor, Francis J. Pallischeck, Dr. Donald Hare, Lindsey Embrey and Walter W. Peter are and were members of and do constitute the Town Board of the Town of Penfield, Monroe County, New York, and as such they and their predecessors in office have passed and have continued to maintain and refused to alter a certain zoning ordinance in said Town and they individually and/or through their agents and/or employees have participated in the actions, events, activities and helped cause and create the circumstances hereinafter set forth and complained of.

ELEVENTH: That now and at all times hereinafter mentioned, the defendant Town of Penfield is and was a municipal

corporation organized and existing pursuant to the laws of the State of New York and existing within the State of New York and County of Monroe and lying contiguous to the territorial boundaries of the City of Rochester, New York.

TWELFTH: That pursuant to state enabling legislation, the defendants Gossin, Pallischeck, Hare, Embrey and Peter and/or their predecessors in office constituting the Town Board of the Town of Penfield, New York, on the 5th day of May 1962, adopted the zoning ordinance of said Town being and constituting of Chapter 29 of the Town Code of the Town of Penfield of which sections 29-1 through 29-29 relating to zoning are attached hereto as Exhibit A and made a part hereof.

THIRTEENTH: That said ordinance,

both as enacted and/or as administered by the defendants afore named is violative of the Constitution of the United States and in particular, without intending to limit, the First, Ninth and Fourteenth Amendments thereof, and is further violative of the statutory law of the United States, and, in particular, without intending to limit, 42 USC 1981, 1982, 1983 and 1984.

FOURTEENTH: That the statute as enacted and/or administered by the defendants, has as its purpose and in fact, effects and propagates exclusionary zoning in said Town with respect to excluding moderate and low income multiple unit housing and further tends to exclude low income and moderate income and non-white residency in said Town and thereby deprives persons and has deprived persons

including the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler of the same right to inherit, purchase, lease, sell and/or convey real property and to make and enforce contracts and to the full and equal benefit of all laws and proceedings for the security of persons and property as are enjoyed by persons presently living in said Town.

FIFTEENTH: That said exclusions and/or deprivations accomplished as aforesaid and/or hereinafter stated were caused, created and/or perpetuated by the individual defendants and others whose identities are presently unknown, acting under color of said zoning ordinance, the New York State enabling statute, and the custom and usage of the State and has subjected the plaintiffs and others similarly situated to be deprived of

certain rights, privileges and immunities secured by the Constitution and laws of the United States.

SIXTEENTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual defendants and their predecessors in office have arbitrarily and capriciously and continuously, for a period of over fifteen (15) years last passed, administered the provisions of the said zoning ordinance by refusing to grant variances, building permits, and by use of special permit procedures and other devices so as to effect and propagate the exclusionary and discriminatory policy, plan and/or scheme afore referred to and also so as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan

Rochester area, including the City of Rochester, considering the location and movement of local industry, commercial establishments, and population and considering also population density, fluidity and growth of the metropolitan Rochester area and have thereby kept low and moderate income persons (without the capital requirements to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from residing within the boundaries of said Town of Penfield. That as a result of the aforesaid, plaintiffs, Harris, Ortiz, Broadnax, Reyes and Sinkler and others similarly situated, have been unable to lease sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore

had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs, Harris, Ortiz, Broadnax, Reyes, and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00)

SEVENTEENTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual defendants and the defendant Town have arbitrarily and capriciously and continuously for a period of over fifteen (15) last past enacted, administered and enforced the provisions of the ordinance as set forth above as Exhibit A and have failed to amend, modify, alter or waive the provisions of the same including the amending, waivering, altering and/or modifying the provisions of

the zoning map, the variance and set-back and minimum lot requirements, population density, use density, units per acre density, floor area and sewer requirements, traffic flow, ingress and egress and street location requirements so as to effect and propagate the exclusionary discriminatory policy, plans, and/or schemes afore referred to and also so as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan Rochester area including the City of Rochester, considering the location and movement of local industry, commercial establishments, and population and considering also population density, fluidity, and growth in the metropolitan Rochester area, and thereby keep low and moderate income persons (without the capital requirements to purchase real estate) and non-White persons (most of whom statistically exist in the afore-

referred income categories) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional added expenses by way of commuting expenses to their places of employment and others;and as a result,the Plaintiffs,Harris, Ortiz, Broadnax,Reyes and Sinkler, individually

and/or collectively have been damaged and/ or will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

EIGHTEENTH: That contrary to the Constitution and laws of the United States, as hereinabove and hereinafter set forth, the individual defendants and the defendant Town of Penfield have arbitrarily and capriciously and continuously and for a period of over fifteen (15) years last past, refused to grant necessary tax abatements and otherwise failed as duly constituted legislative and administrative bodies, and through their agents and employees to cooperate with, assist, and accommodate applicants for low and moderate income multiple unit housing in the Town of Penfield, all in furtherance of a policy of exclusionary zoning as

afore stated regarded such housing and also as to neglect and ignore the minimum requirements of the population of the Town of Penfield and the metropolitan Rochester area, including the City of Rochester, New York, given the location and movement of local industry, commercial establishments and population, and considering also population growth, fluidity and density in the metropolitan Rochester area and they have thereby under color of law, ordinance, custom, usage kept low and moderate income class persons (without the capital requirements to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income category) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid

the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have there fore had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

NINETEENTH: That the provisions of the zoning ordinance afore referred to and the enactment and administration

of the same by the named defendants and their predecessors in office under color of law, ordinance, custom and usage as hereinbefore and hereinafter set forth with regard to lot area, set backs, (including distances between units, front, rear and side set backs, and street set backs) population density, density of use, units per acre, floor area, sewer requirements, traffic flow, ingress and egress, street location, for low and moderate income multiple dwelling unit housing, are contrary to the law and Constitution of the United States in that they make practically and economically impossible the construction of sufficient numbers of low and moderate income multiple dwelling unit housing in the Town of Penfield to satisfy the minimum housing requirements of both the Town of

Penfield and the metropolitan Rochester area including the City of Rochester, New York, given the location and movement of local industry, commercial establishments and population, and considering also population growth, fluidity, and density in the metropolitan Rochester area, and thereby kept and keep low and moderate income persons (without the capital required to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from residing within the boundaries of the Town of Penfield. That as a result of the aforesaid, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within the said Town of Penfield, and they have had

to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional added expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

TWENTIETH: That the provisions of the zoning ordinance afore referred to including the provisions relating to the zoning map and/or master plan and the enactment and administration of the same by the named defendants and their predecessors in office under color of law, ordinance, custom, and usage as hereinbefore and hereinafter stated, is contrary to

the law and Constitution of the United States in that it fails to allocate and designate sufficient land of good quality for the construction of low and moderate income multiple unit housing in the Town of Penfield to satisfy the minimum requirements and demands of the population of the Town of Penfield and the metropolitan Rochester area, including the City of Rochester, New York, given the location and movement of local industry, commercial establishments, population and considering also population density, growth and fluidity in the metropolitan Rochester area, and thereby keep low and moderate income persons (without the capital required to purchase real estate) and non-white persons (most of whom statistically exist in the afore referred to income categories) from

residing within the boundaries of the Town of Penfield. That as a result of the aforesaid, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler, and others similarly situated, have been unable to lease, sell, hold, purchase and/or convey real property within said Town of Penfield, and they have had to find living accommodations far and apart from said Town and also from their places of employment, and they have therefore had to incur additional expenses by way of commuting expenses to their places of employment and others; and as a result, the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler individually and/or collectively have been damaged and/or will in the future be damaged in an amount in excess of Ten Thousand Dollars($10,000.00).

TWENTY-FIRST: That as a proximate

cause of all of the above, the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz and Metro-Act of Rochester, Inc., have been damaged in that they have paid and/or are paying greater and/or additional real estate taxes to the City of Rochester than they would have had the defendants not acted as alleged, because the City of Rochester has and must continue to permit more than its fair share of tax abated housing projects within its territorial limits to meet the low and moderate income housing requirements of the metropolitan Rochester area by reason of the exclusionary practices of defendants, and as a result, the plaintiffs, Vinkey, Reichert, Warth, Harris, Ortiz and Metro-Act of Rochester, Inc. individually and/or collectively have been damaged and/or

will in the future be damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

TWENTY-THIRD: That by reason of all of the afore referred to, the aforestated ordinance, scheme, acts, actions and activities violate the Ninth Amendment in that this ordinance, scheme, acts, actions and activities are calculated to deny and in fact do deny and/or disparage, certain inalienable rights retained by citizens of the United States, including the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc., and this ordinance, scheme, acts, actions and activities violate the Fourteenth Amendment to the United States Constitution and the plaintiffs' rights thereunder by denying plaintiffs Vinkey, Reichert, Warth,

Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc. due process of law and the equal protection thereof, and this ordinance, scheme, acts, actions and activities do further violate the First Amendment rights of the plaintiffs Vinkey, Reichert, Warth, Harris, Ortiz, Broadnax, Reyes, Sinkler and Metro-Act of Rochester, Inc., in that they are denied the right to peaceably assemble for the purpose of living within the geographical limits of the said Town of Penfield.

TWENTY-FOURTH: That there is no legal basis under the Constitution and laws of the United States for the ordinance afore referred to and the actions, activities plan and scheme afore related.

TWENTY-FIFTH: That by reason of all of the acts, actions and/or activities

on the part of the defendants and their predecessors in office hereinbefore and hereinafter set forth, the plaintiffs and others similarly situated have paid, are now paying, and will in the future be forced to pay greater taxes and/or sums of money and/or exactions and/or taxes based upon a higher rate of real estate assessment, than do other persons owning property and/or living in the metropolitan Rochester area, and the plaintiffs and others similarly situated have therefore been subjected to unlike and/or discriminatory taxes and/or exactions all as are in violation of their rights under 42 USC 1981.

WHEREFORE, plaintiffs ask this Court for a judgment and/or order:

A. Declaring the zoning ordinance of the Town of Penfield, including the

provisions relating to the zoning map and/or master plan, null and void as contrary to the statutory and constitutional law of the United States of America.

B. Enjoining the defendants and their successors in office from administering and/or enforcing said zoning act.

C. Compelling the defendants to enact and/or administer a non-exclusionary zoning ordinance repairing and/or alleviating the conditions and effects afore complained of.

D. Granting the plaintiffs, jointly and/or severally, damages actual and/or exemplary, in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00).

E. Assessing the damages incurred by the members of plaintiffs' class and granting money judgment for said sum.

F. Granting the plaintiffs such other and further relief as to the Court may seem just and proper.

/s/ Frank A. Aloi
ROBINSON, WILLIAMS,
ROBINSON AND ANGELOFF
Attorneys for Plaintiffs
Office and Post Office
Address
700 Reynolds Arcade
Building
Rochester, New York
14614
Tel.716-454-1990

Chapter 29

ZONING

APPELLATE DIV.
LIBRARY
JAN 20 1972
ROCHESTER, N. Y.

§ 29-1. Title.
§ 29-2. Purpose.
§ 29-3. Districts.
§ 29-4. Zoning Map.
§ 29-5. Interpretation.
§ 29-6. Definitions.
§ 29-7. Non-Conforming use.
§ 29-8. Residential "AA" District.
§ 29-9. Residential "A" District.
§ 29-10. Front Yards — Residential Districts.
§ 29-11. Apartment House or Multiple Dwelling District.
§ 29-11.1. Town House Dwelling District.
§ 29-11.20. Planned Unit Development District.
§ 29-11.21. General requirements for Planned Unit Developments.
§ 29-11.22. Planned Unit Development application procedure and zoning-approval process.
§ 29-11.23. Site plan approval process for Planned Unit Developments.
§ 29-11.24. Other regulations applicable to Planned Unit Developments.
§ 29-11.25. Financial responsibility for construction in Planned Unit Developments.
§ 29-11.30. Multiple dwellings for the elderly.

§ 29-12. Commercial districts.
§ 29-13. Trailer Park District.
§ 29-14. Industrial District.
§ 29-15. Provisions applicable to all districts.
§ 29-16. Signs.
§ 29-17. Filling of land and dumping of waste material.
§ 29-18. Motor vehicle supply station.
§ 29-19. Utility or communication installations.
§ 29-20. Recreational areas.
§ 29-20.1. Swimming pools.
§ 29-20.2. Golf courses.
§ 29-21. Administration.
§ 29-22. Building permits.
§ 29-23. Certificate of occupancy.
§ 29-24. Zoning Board of Appeals.
§ 29-25. Appeal from decisions of Zoning Board of Appeals.
§ 29-26. Amendments.
§ 29-27. Penalties.
§ 29-28. Repeal of existing ordinances.
§ 29-29. Effective date.

[HISTORY: Adopted, Penfield Town Board, 5-5-62; effective 5-12-62 as amendment of ordinance originally adopted 4-28-30 and amended 7-11-38 and 10-6-41. Subsequent amendments noted where applicable.]

§ 29-1. Title.

This ordinance shall be known as the "Amended Zoning Ordinance of the Town of Penfield."

§ 29-2. Purpose.

The purpose of this ordinance is to promote the health, safety, morals and general welfare of the Town of Penfield, by regulating and restricting the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, court, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, all in accordance with a well considered plan for the development of said Town so as to conserve and stabilize land values and to protect the existing properties during the course of such development, and also to establish penalties for the violation of such regulations.

§ 29-3. Districts.

To carry out the foregoing purpose, the Town of Penfield is hereby divided into districts which shall be designated as follows:

Residential "AA"

Residential "A"

Apartment House or Multiple Dwelling District

Commerical

Trailer Park

Industrial

§ 29-4. Zoning Map.

The location and boundaries of the foregoing districts are hereby established as delineated on the Amended Zoning Map filed with the Town Clerk of the Town of Penfield and in the description of the boundaries thereof, filed therewith, and which said map is hereby made a part of this ordinance and declared to be the "Official Zoning Map of the Town of Penfield."

§ 29-5. Interpretation.

In this ordinance, if not inconsistent with the context, the singular may be taken for the plural and the plural for the singular, except as to the number of permitted structures; person may include more than one, an association, co-partnership or a corporation. If any section, paragraph, subdivision or provision of this ordinance shall be held invalid, such invalidity shall apply only to the section, paragraph, subdivision or provision adjudged invalid, and the rest of this ordinance shall remain valid and effective.

§ 29-6. Definitions.

Except where specifically defined herein, all words used in this ordinance shall carry their customary meanings. Words used in the present tense include the future and the plural includes the singular; the word "lot" includes the word "plat" or "parcel"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied".

1. ACCESSORY STRUCTURE OR USE. A subordinate use or structure customarily incident to and located upon the same lot occupied by the main use or structure.

2. APARTMENT HOUSE OR MULTIPLE DWELLING. A structure arranged or designed to be occupied by two or more families, two or more individuals or two or more groups of individuals, living independently of each other, exclusive of row dwellings. [Amended 1-4-65]
3. BILLBOARD. Any outdoor signs, advertising medium, structure or device which advertises, directs, or calls attention to any business, article, substance, service, or any other thing which is painted, printed, pasted, posted or affixed to any building, billboard, wall, fence, railing, natural object or structure of any kind on real property or upon the ground itself.
4. BOARDING HOUSE. A structure in which more than two persons are supplied with meals and/or lodging for hire.
5. BUILDING LINES. The lines which delineate the area on which a structure may be legally erected.
6. BUILDING OFFICIAL. The official designated by the Town Board of the Town of Penfield pursuant to the provisions of the "Building Code Administration and Lot Control Ordinance" to administer the provisions of that ordinance and of this zoning ordinance.
7. CLUB. Membership, social or recreational building, but excluding one, the chief activity of which is a service customarily carried on as a business.
8. CORNER LOT. A lot or portion of a lot at the junction of and abutting on two intersecting streets.
9. CUSTOMARY AGRICULTURAL OPERATIONS. The use of a parcel of land of five acres or more for gain in the raising of agricultural products, livestock, poultry, and dairy products. It includes necessary farm structures within the prescribed limitations and the storage of necessary equipment. It includes also the use of a parcel of land of less than five acres except that on such parcels, the raising of fur-bearing animals, livery or boarding stables, dog kennels and the raising of livestock and poultry for sale and slaughter is excluded and therefore prohibited.

10. DWELLINGS, ROW. A building consisting of a series of one-family sections having a common wall between adjacent sections.
11. FAMILY. Any number of individuals living together as a single housekeeping unit and preparing their food as one unit.
12. FRONT. The front of a lot shall be the line of the lot corresponding with or approximately parallel with and nearest to the street on which the lot faces as determined by the Town Assessment roll.
13. FRONT YARD. The required open space between the street or highway line and the front wall of the main structure including any attachments thereto with the exception only of cornices or entrance steps.
14. GARAGE ATTACHED. A private garage which is attached to or forms an integral part of the main structure on the lot.
15. GARAGE, PRIVATE. A structure used for the storage of motor vehicles owned or used by the occupants on the lot upon which it is erected for a purpose accessory to the legal use of the lot and with no provision for repairing or servicing such vehicles for profit.
16. GARAGE, PUBLIC. Any structure, not a private garage, designed or used for the repair or storage of motor vehicles.
17. GRADE. The average level of the finished surface of the ground adjacent to the exterior walls of the building.
18. HABITABLE AREA. That area of a building designed to be occupied by one or more persons for year-round living, sleeping, eating or cooking, exclusive of basements, garages and unheated breezeways or porches.
19. HEIGHT-BUILDING. The vertical distance measured from grade level to the highest level of a flat roof or to the

average height of a pitched, gabled, hip or gambrel roof, excluding bulkheads, penthouses, providing they are less than 12 feet in height and do not occupy more than 10% of the area of the roof upon which they are located.

20. LODGING HOUSE. A structure in which more than two persons are lodged for hire.

21. LOT. A parcel of land which is or may be occupied by a structure or use with accessories thereto, including the open spaces thereon but excluding any part thereof within the bounds of a highway.

22. NON-CONFORMING STRUCTURE OR USE. A structure or use of land legally existing at the time of the enactment of this ordinance which does not conform with the regulations set forth herein for the district in which it is situated.

23. PROFESSIONAL OFFICE. The office of a doctor, lawyer, dentist and person performing any activity or service licensed pursuant to the provisions of the Education Law of the State of New York.

24. REAR YARD. The required open unoccupied space, measured perpendicularly from the rear lot line to the nearest part of the main or accessory structure on the premises.

25. RESTAURANT. A permanent structure used for the serving of meals with table or counter and chair facilities, exclusive of hot dog stands or soft drink establishments.

26. SIDE YARD. The open unoccupied space measured perpendicularly from the side lot lines to the nearest part of the main or accessory structure on the premises.

27. STREET OR HIGHWAY LINE. The line which is the joint boundary line between a lot and a street or highway right-of-way.

28. STORY. The portion of a building which is between one floor level and the next higher floor level or the roof. If a Mezzanine floor area exceeds one-third (⅓) of the area of the floor immediately below, it shall be deemed to be a story.

A basement shall be deemed to be a story when its ceiling is six (6) or more feet above the finished grade. A cellar shall not be deemed to be a story if unfinished and without human occupancy.

29. STORIES, NUMBER OF

(a) ONE-STORY BUILDING, may consist of a basement and one floor providing the basement ceiling is less than six (6) feet above grade.

(b) TWO-STORY BUILDING, may consist of a basement, first and second floor providing the basement is less than six (6) feet above grade.

(c) ONE-AND-ONE-HALF STORY BUILDING, may consist of a basement, first and second floor, providing the distance from the second floor to the mean of the roof does not exceed seven (7) feet and the basement ceiling is less than six (6) feet above grade.

30. STRUCTURALLY ALTERED. Any alteration whereby a structure is adapted to another or different use and to any alteration or repair which would violate any of the regulations herein.

31. STRUCTURE. A building or anything constructed or erected which requires temporary or permanent location on or the support of the soil, or which is attached to any structure, exclusive, however, of portable or self-propelled equipment.

32. USE. The purpose for which any structure or any part thereof and the premises or any part thereof is occupied or intended to be occupied, or if either is unoccupied, the purpose for which they may be occupied.

33. PRIVATE SWIMMING POOL. Any artificial pool of water constructed or maintained outdoors for the purpose of providing swimming or bath facilities for a private family and invited guests, in excess of two hundred (200) square feet of horizontal area or over twenty (20) inches in depth, shall constitute a private swimming pool. [Added 9-6-66, amended 9-5-67]

34. GROUP SWIMMING POOL. Any artificial pool of water constructed outdoors or indoors for the purpose of providing swimming or bathing facilities for more than one private family and invited guests, shall constitute a group swimming pool. [Added 9-6-66]

35. MOTOR VEHICLE SUPPLY STATION. A structure designated or used:

(1) For the sale to the public of auto accessories and tires, oil, gasoline and other petroleum products customarily used in the operation of an automobile;

(2) For the making of minor repairs, tune-ups, lubrication, and tire changes of automotive vehicles.

The term does not include the making of major engine repairs, body repairs, painting or dismantling of vehicles or storage of disabled vehicles. [Added 7-5-67]

(The next page is 2909)

§ 29-7. Non-Conforming use.

Any lawful use existing at the time of the passage of this Ordinance may be continued though not conforming to the regulations of the district in which it is maintained subject to the following regulations:

a. Structural alterations shall not exceed 50% of assessed valuation.

b. Enlargement of the structure is prohibited without change to a conforming use.

c. Such use may only be continued on the premises and in the structure where it exists at the time of the adoption hereof.

d. Any structure destroyed by fire or other calamity may be restored within twelve (12) months of such destruction and the former use continued provided that the reconstruction shall not exceed the dimensions of the destroyed property.

e. No change may be made in the non-conforming use. The right to continue such non-conforming use shall immediately cease upon any such change unless such change has been approved by the Zoning Board of Appeals.

f. The failure to exercise any non-conforming use for a period of one year or more shall terminate such non-conforming use of the structure or premises, and thereafter such structure or premises shall be used only in conformity with the provisions of this ordinance.

g. At any time after the effective date of this ordinance, upon the written request of the user of any structure or premises, or at the instance of the Building Official, a survey of any existing legal use shall be made by said Official. Such survey shall thereafter be filed with the Zoning Board of Appeals who shall thereafter recommend to the Town Board the issuance by it of a Certificate of Existing Use

which shall clearly delineate the premises and structure referred to and shall specify the nature and extent of such existing use. Such Certificate shall be prepared in triplicate, one copy of which shall be filed with the Town Clerk; one copy furnished the Zoning Board of Appeals and one copy served personally upon the owner or user. If such user be not satisfied with the certificate as issued, he may, within thirty (30) days of the receipt thereof, request a review of such decision by the Town Board who shall hear and consider said review. Following such consideration, said Town Board may affirm, modify, enlarge or void such certificate and shall thereupon cause to be issued a final Certificate of Existing Use in conformity with its decision. If no such review is requested by the user or if no proceedings are taken as provided by law to review the decision of the Town Board, the Certificate, as the case may be, shall be and become binding and conclusive upon the user or upon any person or persons claiming in his right as to the application of any provision of this Ordinance or in any action or proceeding instituted hereunder, upon the expiration of thirty (30) days from the receipt of such Certificate or amended Certificate by such user. The fee for the issuance of any Certificate when issued at the request of the user of any structure or premises shall be twenty-five dollars ($25.00).

§ 28-8. Residential AA District.

a. USES. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Residential "AA" District except for one or more of the following purposes:

1. One family dwelling.
2. Churches and similar places of worship.
3. Elementary, high schools, colleges, universities, public parks and public playgrounds.

4. Boarders and lodgers not to exceed two (2) in a one (1) family dwelling.
5. Customary agricultural operations, as the same are herein defined, but excluding within one hundred (100) feet of any lot line, any housing of poultry or stabling of livestock or storage of manure or other odor or dust producting material.
6. Public library.
7. Municipal buildings or structures (including Town, school and improvement or fire district).

b. ACCESSORY USES. The following accessory uses are permitted in a Residential "AA" District when located on the same lot with a permitted principal use.

1. Private garage, either attached or unattached to the principal structure.
2. Professional offices (when part of the personal residence of and used solely by professional persons), and customary home occupations conducted by the resident only and conducted in the principle building only. There shall be no evidence of such use other than an announcement or sign not to exceed two (2) square feet in area. Exterior alterations to the residence or principle building which change the essential character thereof for such use are prohibited.

c. AREA OF STRUCTURES. No one story residential structure shall be hereafter erected unless it shall contain an habitable area, exclusive of open porch or attached garage, of not less than 1,300 square feet; no one and one half story residence or split level residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,400 square feet; and no two story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,500 square feet.

d. MINIMUM SIZE LOTS. No structure shall be erected on a lot other than a corner lot, unless such lot shall have a width of at least one hundred (100) feet at the building line, an average depth of at least two hundred (200) feet and a total ground area of not less than twenty thousand (20,000) square fee. Corner lots shall have a width of at least one hundred twenty-five (125) feet at the building line, an average depth of at least two hundred (200) feet and a total ground area of not less than twenty five thousand (25,000) square feet. This provision shall not apply to lots appearing on any subdivision plat heretofore approved or of any existing lot of smaller size. In no case, however, shall the size of the lot be smaller than the area necessary, where needed, for adequate and sufficient individual sewage disposal and/or the safe location of a potable water well, where needed.

e. YARDS. No church, school or other permitted structure designed for public assembly or open to the public, hereafter erected, structurally altered, reconstructed or moved in a Residential "AA" District shall be nearer to any street line than 100 feet, whether front or side and no such structure shall be nearer than 100 feet to any interior or rear lot line. Every other permitted structure hereafter erected, structurally altered, reconstructed or moved in such District shall be no nearer to any street line, whether front or side, than is provided under the provisions of § 29-10 of this Ordinance and no such structure shall be nearer than ten (10) feet to any interior side or rear lot line. The purpose of this provision is to establish suitable side and rear yards.

§ 23.9 Residential "A" District.

a. USES. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land, or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Residential "A" District except for one or more of the following purposes:

1. All uses permitted in a Residential "AA" District, subject to all the use restrictions specified therefore in the provisions relating to said district.

2. Lodging or boarding houses, where no more than four persons are supplied with meals and/or lodging for hire. [Amended 1-4-65]*

b. ACCESSORY USES. The following accessory uses are permitted in a Residential "A" District when located on the same lot with a permitted principle use.

1. Private garage, either attached or unattached to the principle structure.

2. Professional offices (when part of the personal residence of and used solely by professional persons), and customary home occupations conducted by the resident only and conducted in the principle building only. There shall be no evidence of such use other than an announcement or sign not to exceed two (2) square feet in area. Exterior alterations to the residence or principle building which change the essential character thereof for such use are prohibited.

c. AREA OF STRUCTURES. No one story resident structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,000 square feet; no story and a half or split level residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,200 square feet; and no two story residential structure shall be hereafter erected unless it shall contain an habitable area exclusive of open porch or attached garage of not less than 1,300 square feet.** [Amended 1-4-65]

* Editor's Note: Amendment repealed 2. and renumbered this subsection from 3.
** Editor's Note: Eliminated last sentence which referred to size requirements.

d. MINIMUM SIZE LOTS. No structure shall be erected on other than a corner lot, unless such lot shall have a width of at least one hundred (100) feet at the building line, an average depth of at least one hundred and fifty (150) feet and a total ground area of not less than fifteen thousand (15,000) square feet. Corner lots shall have a width of at least one hundred twenty-five (125) feet at the building line, an average depth of at least one hundred and fifty (150) feet and a total ground area of not less than eighteen thousand seven hundred and fifty (18,750) square feet. This provision shall not apply to lots appearing on any subdivision plat heretofore approved or of any legally existing lot of smaller size. In no case, however, shall the size of the lot be smaller than the area necessary for adequate and sufficient individual sewage disposal, and the safe location of a potable water well, where needed.

e. YARDS. No structure hereafter erected, structurally altered, reconstructed or moved in a Residential "A" District, shall be nearer to any street line, whether front or side, or to any interior or rear lot line than is provided under the provisions of § 29-8, paragraph e., of this ordinance.

§ 29-10. Front yards — Residential Districts.

For the purpose of establishing suitable front yards, no structure hereafter erected, structurally altered, reconstructed or moved in any Residential District, shall be nearer to the center line of any highway than herein provided:

1. 108 feet from the center line of the highway of the following streets and highways:

Atlantic Avenue
Browneroft Boulevard
Carter Road
Fairport-Nine Mile Point Road
Five Mile Line Road
Penfield Road
Plank Road
Salt Road

2. [Added 8-3-64]. Ninety (90) feet from the center line of the highway of the following streets and highways:

Baird Road, south of Penfield Road
Bay Road
Creek Street
Huber Road
Harris Road
Jackson Road
State Road
Watson Road
Whalen Road

3. [Added 8-3-64]. Eighty-three (83) feet from the center line of the highway of any street or highway not hereinabove specifically set forth.

4. [Added 8-3-64]. Nothing in the foregoing shall prohibit the construction of an addition to a lawfully existing residence, provided that such addition shall not be constructed nearer the center line of the highway than the existing residence, and provided that such addition shall not be in violation of any side- or rear-line setback requirement imposed by this ordinance.

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§ 29-11. Apartment House or Multiple Dwelling District.

A. USES. No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any district designated on the Official Amended Zoning Map of the Town of Penfield as an Apartment-House or Multiple-Dwelling District, except for apartment houses and multiple dwellings as defined in § 29-6, Paragraph 2 of this ordinance and such accessory structures as are customarily incident to and used in connection with such main structure.

B. AREA OF STRUCTURES: No apartment house or multiple dwelling, as herein defined, shall be hereafter erected, or existing structure altered or reconstructed to become such, unless each unit thereof shall contain the following minimum habitable area:

Studio apartment (no bedroom)	500 square feet
One-bedroom apartment	600 square feet
Two-bedroom apartment	800 square feet
Three-bedroom apartment	950 square feet

C. MINIMUM LOT SIZE: [Amended 9-7-65] Every lot in said district shall contain a minimum of three thousand five hundred (3,500) square feet for each apartment living unit to be erected thereon, shall be of such size that the horizontal area of any structure or group of structures to be erected, or as it or they shall exist after alteration or remodeling, shall not occupy more than twenty-five per centum (25%) of the area of the lot. The horizontal area shall be the area determined by projecting the extreme lines of the structure vertically to a horizontal plane. The horizontal area of a group of structures located on the same lot shall be the combined areas of all buildings comprising the group.

D. YARDS: No structure hereafter erected, structurally altered, reconstructed or moved in said district shall be nearer

to any street line than the height of the building or buildings, and in no event nearer than eighty (80) feet. No structure not in excess of three (3) stories in height shall be nearer than twenty (20) feet to any interior side or rear lot line. No structure from four (4) to six (6) stories in height, inclusive, shall be nearer than thirty (30) feet to any interior side or rear lot line, and no structure seven (7) stories or more in height shall be nearer than forty (40) feet to any interior side or rear lot line. Where the rear or side lot line abuts any lot or land area in a residential district, such structure shall not be located closer than one hundred (100) feet from the line adjoining said residential district, and a fifty-foot strip immediately adjoining said residential district shall be maintained as a landscape buffer area. [Amended 8-3-64]

E. Off-street parking. All premises occupied by apartment houses or multiple dwellings in this district shall provide and maintain at the site of such structures and completely off the limit of any street or highway an improved and usable parking area of sufficient size to provide one and one-half (1½) parking spaces for each apartment or living unit to be contained in such structure, of which requirement one (1) such parking space per apartment or living unit shall be within an enclosed garage. All unenclosed parking areas shall be screened from adjacent properties.

§ 29-11.1. Townhouse Dwelling District. [Added 6-2-69]

A. Definition. Townhouses are defined as buildings or dwelling groups containing individual single-family units permitting separation of such family groups by a party wall. [Amended 8-7-72, effective 8-28-72]

B. Uses. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Amended Zoning Map of the Town of Penfield as a Townhouse Dwelling District, except for townhouses as herein defined and such accessory structures as are herein enumerated.

C. Townhouses. No townhouse or clusters of townhouses as herein defined shall be hereafter erected or existing structures altered or reconstructed to become such except in accordance with the following criteria:

C. TOWN HOUSES. No town house or clusters of town houses as herein defined shall be hereafter erected or existing structures altered or reconstructed to become such except in accordance with the following criteria:

1. DENSITY LIMITATION. The overall density shall not exceed nine (9) dwelling units per acre.

2. AREA REQUIREMENTS.

a) Lot size. No dwelling shall be erected on a parcel of land that has less than twenty (20) feet frontage.

b) Front yards (setbacks). No building or part thereof shall be erected or altered in this district that is nearer the private street center line upon which it fronts than forty-five (45) feet.
No building or part thereof shall be erected or altered in this district that is nearer than sixty (60) feet to the center line of a public or dedicated road upon which it fronts.
If any building erected in this district faces a public or dedicated road the opposite side of which is either AA or A Residential District, the front yard setback shall be that which is required by the Residential District.

c) Side yard setbacks. A side yard setback of thirty-five (35) feet is required from the center line of a private road on each corner lot; sixty (60) feet from the center line of a public road or dedicated road. No side yards shall be required of interior lots having a common wall. A side yard setback of at least equal to the height of the highest adjacent building and no less than twenty (20) feet shall be required between building groups.

d) Rear setback. A setback of at least thirty (30) feet from any other structure or any external boundary line is required on each lot.

3. HEIGHT LIMITATIONS. No building shall exceed two and one-half (2½) stories nor shall any building exceed thirty-five (35) feet in height, except for permitted accessory structures as approved by the Planning Board as hereinafter provided.

4. PARKING REQUIREMENTS. A minimum of two (2) parking spaces shall be provided for each dwelling unit, one (1) of which shall be completely enclosed and covered.

5. SPECIFIC REQUIREMENTS.

a) Unit size. No town-house-dwelling unit shall be constructed, altered or reconstructed unless it shall contain a minimum of one thousand two hundred (1,200) square feet of habitable area and be not less than twenty (20) feet in width.

b) There shall be no more than eight (8) individual town-house units within each building or dwelling group.

c) The main structures and all accessory buildings shall not occupy more than twenty-seven percent (27%) of the gross acreage as shown on site plan.

6. PERMITTED ACCESSORY STRUCTURES AND USES. The following accessory uses and structures are permitted subject to the approval of the Planning Board of the site plan and as hereinafter provided:

a) Private garages.

b) Group swimming pools, subject to provisions of § 29-20.1 of this ordinance, except that any pool proposed as an integral part of a town-house pro-

ject may be approved and a permit issued by the Planning Board as a part of its site-plan approval.

c) Parks, playgrounds and play areas to include structural facilities incidental to recreational areas, such as rest rooms, bathhouses and clubhouses, which facilities are limited to those that are publicly owned or operated not for profit for the benefit of the town-house owners of the district or a part thereof.

d) Maintenance buildings.

7. SITE-PLAN REQUIREMENTS. The site plan submitted for review, pursuant to § 29-15, Paragraph 11, of this ordinance, shall include the following items:

a) Topography, including existing and proposed contours.

b) Proposed street system for both public and private streets.

c) Proposed reservation for parks, playgrounds, recreational areas and other open spaces.

d) Off-street parking spaces.

e) Types of dwellings and portions of the area proposed therefor.

f) Locations of all structures and parking spaces, including number of parking spaces.

g) A tabulation of the total number of acres in the proposed project and a percentage thereof designated for the proposed dwelling types, and total ground coverage.

h) A tabulation of overall density per gross acres.

i) Preliminary plans and elevations of the several dwelling types.

j) Location and size of driveways.

k) Type and location, size and number of all plantings.

l) All grassed areas.

m) All sidewalk areas.

n) Type and size of fences or hedges.

o) Design of the proposed buildings including types of finishes on exteriors.

p) Provisions for disposal of rubbish.

q) Location of all buildings on site to include distance from lot lines.

r) Location and sizes of signs, if any.

s) Exterior lighting, if any.

§ 29-11.20. Planned Unit Development District.
[Added 6-1-70; effective 6-21-70]

A. Intent. It is the intent of the Planned Unit Development (PUD) Article (§§ 29-11.20 through 29-11.25) to provide flexible land use and design regulations through the use of performance criteria so that small- to large-scale neighborhoods or portions thereof may be developed within the town that incorporate a variety of residential types and nonresidential uses, and contain both individual building sites and common property which are planned and developed as a unit. Such a planned unit is to be designed and organized so as to be capable of satisfactory use and operation as a separate entity without necessarily needing the participation of other building sites or other common property in order to function as a neighborhood. This Article specifically encourages inno-

vations in residential development so that the growing demands for housing at all economic levels may be met by greater variety in type, design and siting of dwellings and by the conservation and more efficient use of land in such developments.

This Article recognizes that the standard zoning function (use and bulk) and the subdivision function (platting and design) are appropriate for the regulation of land use in areas or neighborhoods that are already substantially developed, but that PUD techniques for land development may be more appropriate in areas of the town that are not already substantially developed. This Article recognizes that a rigid set of space requirements along with bulk and use specifications would frustrate the application of the PUD concept. Thus, where PUD techniques are deemed appropriate through the rezoning of land to a PUD District by the Town Board, the set of use and dimensional specifications elsewhere in this ordinance is herein replaced by approval process in which an approved plan becomes the basis for continuing land-use controls. Consequently, where the provisions of §§ 29-3, 29-8, 29-9, 29-10, 29-11, 29-11.1, 29-12, 29-15, 29-20 and 29-20.1 of the amended Zoning Ordinance are inconsistent with the provisions of this section, the provisions of this section shall prevail.

B. Objectives. In order to carry out the intent of this Article, a PUD shall achieve the following objectives:

(1) A maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), types of housing, lot sizes and community facilities available to existing and potential town residents at all economic levels.

(2) More usable open space and recreation areas.

(3) More convenience in location of accessory commercial and service areas.

(4) The preservation of trees, outstanding natural topography and geologic features and prevention of soil erosion.

(5) A creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.

(6) An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs.

(7) A development pattern in harmony with the objectives of the Master Plan.

(8) A more desirable environment than would be possible through the strict application of other Articles of this ordinance.

§ 29-11.21. General requirements for Planned Unit Developments. [Added 6-1-70; effective 6-21-70]

A. Minimum area. Under normal circumstances, the minimum area required to qualify for a PUD District shall be one hundred (100) contiguous acres of land. Where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this Article, the Planning Board may consider projects with less acreage.

B. Ownership. The tract of land for a project may be owned, leased or controlled either by a single person or corporation, or by a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the Approved Plan shall be binding on all owners.

C. Location of PUD District. The PUD District shall be applicable to any area of the town where the applicant can

demonstrate that the characteristics of his holdings will meet the objectives of this Article.

D. Permitted uses. All uses within an area designated as a PUD District are determined by the provisions of this section and the approved plan of the project concerned.

(1) Residential uses. Residences may be of any variety of types. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this Article. To insure a variety of types of residences, to prevent overcrowding, to encourage adequate light and air space for fire protection, the following criteria shall be met:

(a) A minimum of ten percent (10%) by acreage shall contain single-family detached dwellings having the following minimum square feet of habitable area exclusive of open porch or attached garage:

1	story	1,300 square feet
1½	story	1,400 square feet
2	story	1,500 square feet

Side and rear setbacks shall conform to § 29-8 of this ordinance.

Average density shall not exceed two (2) dwelling units per acre.

(b) A minimum of fourteen percent (14%) by acreage shall contain single-family detached dwellings having the following square feet of habitable area exclusive of open porch or attached garage:

1	story	1,000 - 1,300 square feet
1½	story	1,200 - 1,400 square feet
2	story	1,300 - 1,500 square feet

Side and rear setbacks shall conform to § 29-8 of this ordinance. Average density shall not exceed three (3) dwelling units per acre.

(c) A minimum of seven percent (7%) by acreage shall contain single-family detached or double homes for sale.

Single-family detached homes shall have the following square feet of habitable area exclusive of open porch or attached garage:

1	story	800 - 900 square feet
1½	story	1,000 - 1,100 square feet
2	story	1,100 - 1,200 square feet

Double homes for sale shall have a minimum habitable area of nine hundred (900) square feet per dwelling unit.

Side and rear setbacks under this subsection shall conform to § 29-8 of this ordinar.. Average density shall not exceed four (4) dwelling units per acre.

(d) A maximum of thirty percent (30%) by acreage may contain single-family detached dwellings having the following square feet of habitable area exclusive of open porch or attached garage:

1	story	850 - 1,000 square feet
1½	story	1,050 - 1,200 square feet
2	story	1,150 - 1,300 square feet

No structure hereon shall be nearer than eight (8) feet to any interior side or rear lot line. Average density shall not exceed three (3) dwelling units per acre.

(e) A maximum of twenty-seven percent (27%) by acreage may contain multiple dwellings.

The habitable area of dwelling units shall conform to the requirements of Paragraph B of § 29-11 of this ordinance.

The horizontal area of all structures including garages shall not occupy more than twenty percent (20%) of the land area allocated to the multiple dwelling portion of the PUD.

Each dwelling unit shall have two (2) adequate parking spaces, one (1) of which shall be within an enclosed garage.

Average density shall not exceed nine (9) dwelling units per acre for town houses and twelve (12) dwelling units per acre for apartments.

The setback for structures from any street shall be as prescribed in Subparagraph (f) herein.

There shall be a distance between multiple-dwelling buildings not less than the height of the tallest building.

(f) Front setbacks shall be based on the function of the streets. For state and county highways or major town roads, no building unit shall be closer than one hundred (100) feet from the highway line; for internal subdivision streets that function as collectors and feeders to major roads, no building unit shall be closer than fifty (50) from the street line; and on purely internal streets, no building unit shall be closer than thirty (30) feet from the street line.

(g) In all residential areas, the acreage allocated to the various types of residential uses shall include all streets and highways therein, including one-half (½) the width of any abutting street or highway.

(2) Accessory commercial and service uses. For those developments in excess of one hundred (100) acres, commercial and service uses, not to exceed two percent (2%) of the total acreage, may be permitted where such uses are scaled primarily to serve the residents of the PUD.

(3) Customary accessory or associated uses, such as private garages, storage spaces, recreational and community activities, churches and schools, shall also be permitted or required as appropriate to the PUD.

(4) A minimum of ten percent (10%) by acreage shall be set aside for recreational use. Such land must be usable for recreation, such as, but not limited to: picnic areas, playgrounds, hiking trails, ball parks and community centers, and shall be in addition to other open space consisting of areas unsuitable for any use and which by its nature must be left in its natural state for conservation purposes.

E. Common property in the PUD. Common property in a PUD is a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvement, operation and maintenance of such common property and facilities, including private streets, drives, service and parking areas and recreational and open space areas.

§ 29-11.22. Planned Unit Development application procedure and zoning-approval process.
[Added 6-1-70; effective 6-21-70]

A. General. Whenever any PUD is proposed, before any permit for the erection of a permanent building in such PUD

shall be granted, and before any subdivision plat of any party thereof may be filed in the office of the Monroe County Clerk, the developer or his authorized agent shall apply for and secure approval of such PUD in accordance with the following procedures:

B. Application for sketch plan approval.

(1) In order to allow the Planning Board and the developer to reach an understanding on basic design requirements prior to detailed design investment, the developer shall submit a sketch plan of his proposal to the Planning Board. The sketch plan shall be approximately to scale, though it need not be to the precision of a finished engineering drawing; and it shall clearly show the following information:

(a) The location of the various uses and their areas in acres.

(b) The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private.

(c) Delineation of the various residential areas indicating for each such area its general extent, size and composition in terms of total number of dwelling units, approximate percentage allocation by dwelling unit type (i.e., single-family detached, duplex, town house, garden apartments, high-rise) and general description of the intended market structure (i.e., luxury, middle-income, moderate-income, elderly units, family units, etc.), plus a calculation of the residential density in dwelling units per gross acre (total area including interior roadways) for each such area.

(d) The interior open-space system.

(e) The overall drainage system.

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(f) If grades exceed three percent (3%), or portions of the site have a moderate to high susceptibility to erosion, or a moderate to high susceptibility to flooding and ponding, a topographic map showing contour intervals of not more than five (5) feet of elevation shall be provided, along with an overlay outlining the above susceptible soil areas, if any.

(g) Principal ties to the community at large with respect to transportation, water supply and sewage disposal.

(h) General description of the provision of other community facilities, such as schools, fire protection services and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated.

(i) A location map showing uses and ownership of abutting lands.

(2) In addition, the following documentation shall accompany the sketch plan:

(a) Evidence of how the developer's particular mix of land uses meets existing community demands.

(b) Evidence that the proposal is compatible with the goals of the official Master Plan.

(c) General statement as to how common open space is to be owned and maintained.

(d) If the development is to be staged, a general indication of how the staging is to proceed. Whether or not the development is to be staged, the sketch plan of this section shall show the intended total project.

(e) Evidence of any sort in the applicant's own behalf to demonstrate his competence to carry out the plan and his awareness of the scope of such a project, both physical and financial.

(3) The Planning Board shall review the sketch plan and its related documents, and shall render either a favorable report to the Town Board or an unfavorable report to the applicant. The Planning Board may call upon the County Planning Council, the Soil Conservation Service, and any other public or private consultants that they feel are necessary to provide a sound review of the proposal.

(a) A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering PUD districting. It shall be based on the following findings which shall be included as part of the report:

[1] The proposal conforms to the Master Plan.

[2] The proposal meets the intent and objectives of PUD as expressed in § 29-11.20.

[3] The proposal meets all the general requirements of § 29-11.21.

[4] The proposal is conceptually sound in that it meets a community need and it conforms to accepted design principles in the proposed functional roadway system, land use configuration, open-space system, drainage system and scale of the elements, both absolutely and to one another.

[5] There are adequate services and utilities available or proposed to be made available in the construction of the development.

(b) An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what might be necessary in order to receive a favorable report. The applicant may, within ten (10) days after receiving an unfavorable report, file an application for PUD districting with the Town Clerk. The Town Board may then determine on its own initiative whether or not it wishes to call a public hearing.

(4) The Chairman of the Planning Board shall certify when all of necessary application material has been presented, and the Planning Board shall submit its report within sixty (60) days of such certification. If no report has been rendered after sixty (60) days, the applicant may proceed as if a favorable report were given to the Town Board.

C. Application for PUD districting.

(1) Upon receipt of a favorable report from the Planning Board, or upon its own determination subsequent to an appeal from an unfavorable report, the Town Board shall set a date and conduct a public hearing for the purpose of considering PUD districting for the applicant's plan, in accordance with the procedures established under §§ 264 and 265 of the Town Law or other applicable law, said public hearing to be conducted within forty-five (45) days of the receipt of the favorable report or the decision of an appeal from an unfavorable report.

(2) The Town Board shall refer the application to the County Planning Council for its analysis and recommendations, and the Town Board shall also refer the application to the Town Engineer for his review.

(a) The Town Board shall give the County Planning Council at least thirty (30) days to render its

report, and within forty-five (45) days after the public hearing, the Town Board shall render its decision on the application.

(b) The Town Engineer shall submit a report to the Town Board within thirty (30) days of the referral duly noting the feasibility and adequacy of those design elements under his sphere of interest. This report need only concern itself with general conceptual acceptance or disapproval, as the case may be, and in no way implies any future acceptance or rejection of detailed design elements as will be required in the later site-plan review stage. The Town Engineer may also state in his report any other conditions or problems that must be overcome before consideration of acceptance on his part.

D. Zoning for Planned Unit Developments.

(1) If the Town Board grants the PUD districting, the Zoning Map shall be so notated. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, visual and acoustical screening, land-use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services, such as schools, fire houses and libraries, protection of natural and/ or historic sites, and other such physical or social demands.

(2) PUD districting shall be conditioned upon the following:

(a) Securing of final site-plan approval in accordance with the procedures set forth in § 29-11.23.

(b) Compliance with all additional conditions and requirements as may be set forth by the Town Board in its resolution granting the PUD District.

§ 29-11.23. Site plan approval process for Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

A. Application for preliminary site plan approval. Application for preliminary site plan approval shall be to the Planning Board and shall be accompanied by the following information prepared by a licensed engineer, architect and/or lanseape architect:

(1) An area map showing applicant's entire holding, that portion of the applicant's property under consideration, and all properties, subdivision, streets and easements within five hundred (500) feet of applicant's property

(2) A topographic map showing contour intervals of not more than one (1) foot of elevation shall be provided.

(3) A preliminary site plan including the following information:

(a) Title of drawing, including name and address of applicant.

(b) North point, scale and date.

(c) Boundaries of the property plotted to scale.

(d) Existing watercourses.

(e) A site plan showing location, proposed use and height of all buildings; location of all parking and truck-loading areas, with access and egress drives thereto; location and proposed develop-

ment of all open spaces including parks, playgrounds and open reservations; location of outdoor storage, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; description of method of sewage disposal and location of such facilities; location and size of all signs; location and proposed development of buffer areas; location and design of lighting facilities; and the amount of building area proposed for nonresidential uses, if any.

(4) A tracing overlay showing all soil areas and their classifications, and those areas, if any, with moderate to high susceptibility to flooding, and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation.

B. Factors for consideration. The Planning Board's review of a preliminary site plan shall include, but is not limited to, the following considerations:

(1) Adequacy and arrangement of vehicular-traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.

(2) Adequacy and arrangement of pedestrian-traffic access and circulation including: separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience.

(3) Location, arrangement, appearance and sufficiency of off-street parking and loading.

(4) Location, arrangement, size and design of buildings, lighting and signs.

(5) Relationship of the various uses to one another and their scale.

(6) Adequacy, type and arrangement of tree, shrubs and other landscaping constituting a visual and/or a noise-deterring buffer between adjacent uses and adjoining lands.

(7) In the case of apartment houses or multiple dwellings, the adequacy of usable open space for playgrounds and informal recreation.

(8) Adequacy of storm water and sanitary waste-disposal facilities.

(9) Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.

(10) Protection of adjacent properties against noise, glare, unsightliness or other objectionable features.

(11) Conformance with other specific charges of the Town Board which may have been stated in the zoning resolution.

In its review the Planning Board may consult with the Town Engineer and other town and county officials, as well as with representatives of federal and state agencies, including the Soil Conservation Service and the New York State Department of Conservation. The Planning Board may require that exterior design of all structures be made by, or under the direction of, a registered architect whose seal shall be affixed to the plans. The Planning Board may also require such additional provisions and conditions that appear necessary for the public health, safety and general welfare.

C. Action on preliminary site plan application. Within ninety (90) days of the receipt of the application for preliminary

site plan approval, the Planning Board shall act on it. If no decision is made within said ninety-day period, the preliminary site plan shall be considered conditionally approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is conditionally approved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report.

The Planning Board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan, of which conformance with shall be considered a condition of approval. Such recommendations shall be considered a condition of approval. Such recommendations shall be limited, however, to siting and dimensional details within general use areas, and shall not significantly alter the sketch plan as it was approved in the zoning proceedings.

If the preliminary site plan is disapproved, the Planning Board's statement shall contain the reasons for such findings. In such case, the Planning Board may recommend further study of the site plan and resubmission of the preliminary site plan to the Planning Board after it has been revised or redesigned.

No modification of existing stream channels, filling of lands with a moderate to high susceptibility to flooding, grading or removal of vegetation in areas with moderate to high susceptibility to erosion, or excavation for and construction of site improvements shall begin until the developer has received preliminary site plan approval. Failure to comply shall be construed as a violation of the Zoning Ordinance and, where necessary, final site plan approval may require the modification or removal of unapproved site improvements.

D. Request for changes in sketch plan. If in the site plan development it becomes apparent that certain elements of

the sketch plan, as it has been approved by the Town Board, are unfeasible and in need of significant modification, the applicant shall then present his solution to the Planning Board as his preliminary site plan, in accordance with the above procedures. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the zoning resolution. If a negative decision is reached, the site plan shall be considered as disapproved. The developer may then, if he wishes, produce another site plan in conformance with the approved sketch plan. If an affirmative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reasons for feeling the project should be continued as modified. Preliminary site plan approval may then be given only with the consent of the Town Board.

E. Application for final detailed site plan approval. After receiving conditional approval from the Planning Board on a preliminary site plan, and approval for all necessary permits and curb cuts from state and county officials, the applicant may prepare his final detailed site plan and submit it to the Planning Board for final approval; except that if more than twelve (12) months have elapsed between the time of the Planning Board's report on the preliminay site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.

The final detailed site plan shall conform substantially to the preliminary site plan that has received preliminary site plan approval. It should incorporate any revisions or other features that may have been recommended by the Planning Board and/or the Town Board at the prelim-

inary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.

F. Action on the final detailed site plan application. Within sixty (60) days of the receipt of the application for final site plan approval, the Planning Board shall render a decision to the applicant and so notify the Town Board. If no decision is made within the sixty-day period, the final plan shall be considered approved.

(1) Upon approving an application, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Building Inspector, who shall then issue a building permit to the applicant if the project conforms to all other applicable requirements.

(2) Upon disapproving an application, the Planning Board shall so inform the Building Inspector. The Planning Board shall also notify the applicant and the Town Board in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.

G. Staging. If the applicant wishes to stage his development, and he has so indicated, then he may submit only those stages he wishes to develop for site plan approval, in accordance with his staging plan. Any plan which requires more than twenty-four (24) months to be completed shall be required to be staged, and a staging plan must be developed. At no point in the development of a PUD shall the ratio of nonresidential to residential acreage or the dwelling unit ratios between the several different housing types for that portion of the PUD completed and/or under construction differ from that of the PUD as a whole by more than twenty percent (20%).

§ 29-11.24. Other regulations applicable to Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

A. Regulation after initial construction and occupancy. For the purpose of regulating and development and use of property after initial construction and occupancy, any changes other than use changes shall be processed as a special permit request to the Planning Board. Use changes shall also be in the form of a request for special permit except that Town Board approval shall be required. It shall be noted, however, that properties lying in PUD Districts are unique and shall be so considered by the Planning Board or Town Board when evaluating these requests, and maintenance of the intent and function of the planned unit shall be of primary importance.

B. Site-plan review. Site-plan review under the provisions of this Article shall suffice for Planning Board review of subdivision under town subdivision regulations, subject to the following conditions:

(1) The developer shall prepare sets of subdivision plats suitable for filing with the office of the Monroe County Clerk in addition to those drawings required above.

(2) The developer shall plat the entire development as a subdivision; however, PUD's being developed in stages may be platted and filed in the same stages.

(3) Final site-plan approval under § 29-11.23F shall constitute final plat approval under the town subdivision regulations, and provisions of § 276 of the Town Law requiring that the plat be filed with the Monroe County Clerk within ninety (90) days of approval shall apply.

§ 29-11.25. Financial responsibility for construction in Planned Unit Developments.
[Added 6-1-70; effective 6-21-70]

No building permits shall be issued for construction within a PUD District until improvements are installed or performance bond posted in accordance with the same procedures as provided for in § 277 of the Town Law relating to subdivisions. The Town Board may require other proof of financial responsibility of the developer so as to insure completion of each phase of any development.

§ 29-11.30. Multiple dwellings for the elderly.
[Added 7-6-71, effective 8-1-71]

The Town Board may, on special application, issue a permit for the construction and maintenance of multiple dwellings for the elderly, as hereinafter defined, in any district of the town except Residential "AA" District.

A. "Multiple dwelling for the elderly" is defined as a building or a group of buildings whose primary purpose is to house one (1) or more persons of the age of sixty (60) years or more in independent living accommodations, but not including independent kitchen and dining facilities. Central kitchen and dining facilities to permit the congregate feeding of the residents are a required part of the concept. The following accessory facilities may be included within the structure or structures: Hobby shop, game rooms, library, meeting rooms, health center.

B. No such permit shall be issued until the application has been referred to the Planning Board for a recommendation. Prior to recommending the issuance of such permit, the Planning Board shall find after public notice and hearing that:

(1) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.

(2) The proposed use would not endanger or tend to endanger public health, safety, morals or general welfare of the community. In making such determination, the Board shall consider: lot areas; necessity for and size of buffer zones; type of construction; parking facilities; traffic hazards; fire hazards; offensive odors, smoke, fumes, noise and lights; the general character of the neighborhood; the availability of public sewers; the nature and use of other premises and the location and use of other buildings in the vicinity; and whether or not the proposed use will be detrimental to neighborhood property.

(3) The proposed use will be in harmony with the probable future development of the neighborhood and will not discourage the appropriate development and use of adjacent lands and buildings or impair the value thereof.

C. After receiving the recommendation of the Planning Board, the Town Board may grant such a permit, or refuse to grant the same, as hereinafter provided:

(1) If the Planning Board has recommended the granting of the permit, the Town Board may grant the same forthwith.

(2) If the Planning Board has recommended the denial of the permit, the Town Board may deny the same forthwith.

(3) If the Planning Board has recommended the granting of the permit, the Town Board may deny the same after public notice and hearing.

(4) If the Planning Board has recommended the denial of the permit, the Town Board may grant the same after public notice and hearing, and after making the findings provided in Paragraph B of this section.

D. In granting such a permit the Town Board may attach such conditions and limitations as it considers desirable in order to assure compliance with the application and the purposes of this ordinance.

E. Subject to the payment of the annual renewal fee, as hereinafter provided, any such permit granted hereunder shall be deemed to be indefinitely extended; provided, however, that it shall expire if the special use shall be terminated, abandoned or cease for more than six (6) months for any reason, or if there is a default in the payment of the renewal fee; and further provided that it may be revoked by the Town Board after due hearing on not less than ten (10) days' notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

F. The Town Clerk of the Town of Penfield shall issue a permit to the applicant upon a proper resolution by the Town Board and the payment of a fee of one hundred dollars ($100.) and shall issue a renewal annually thereafter in January of each year upon payment of a like fee.

§ 29-12. Commercial districts.

A. USES: No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any commercial district designated as such on the Official Zoning Map of the Town of Penfield, except for one (1) or more of the following purposes:

1. Any use permitted in any residential district, subject to all of the provisions applicable to such use in such district, unless specifically modified herein.

2. Billiard hall, bowling alley, dance hall, pool hall and theatre; provided that:

   (a) If the premises on which a structure for such use is located adjoins a residential district, the part of the structure facing such residential district shall have no openings other than fixed windows.

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3. Boat sales and service.
4. Bus passenger station.
5. Cemetery or burial ground by special permit of the Town Board.
6. Commercial parking areas.
7. Convalescent or nursing home.
8. "Drive In" restaurants and dairy bars, where persons are served in automobiles; provided that the nearest point of the property is not less than two hundred (200) feet from the boundary of any residential district.
9. Dry cleaning and laundry collection stations.
10. Hospital.
11. Hotel and Motel.
12. Institutions.
    a) Charitable
    b) Educational
    c) Financial
    d) Religious
    e) Fraternal
    f) Social
13. Laundry, dry cleaning and dyeing establishments (including coin-operated) provided that no more than five (5) persons are employed on the premises in laundry, dry cleaning and dyeing process or combination thereof.
14. Medical clinic.
15. Monument works may be permitted only when adjacent to a cemetery.
16. Mortuary or Undertaking parlors.
17. Offices.
    a) Business
    b) Insurance

    c) Professional
    d) Real Estate
18. Public parking garage.
19. Restaurant, grill, bar, cafe, cocktail lounge and night club, including dancing and entertainment, provided that if the premises on which a structure for such use is located adjoins a residential district, the part of the structure facing such residential district shall have no openings other than fixed windows.
20. Sanitarium.
21. Schools (business or commercial), provided machinery used for instructional purposes is not objectionable due to noises, fumes, dust, smoke, odor or vibration.
22. Shops.
    a) Antique.
    b) Art.
    c) Artists' supply.
    d) Bakery or pastry (employing not more than five (5) persons in production).
    e) Barber, beauty and personal service.
    f) Bicycle (sale and repair).
    g) Book.
    h) Farm implements (sale and repair).
    i) Florist.
    j) Gift.
    k) Heating, plumbing, air conditioning and electrical.
    l) Luggage.
    m) Motor vehicle (sale and repair).
    n) Printing and publishing.

o) Shoe repair.

p) Tailor (employing not more than five (5) persons in production.

q) Tire and battery (exclusive of rebuilding operations).

23. Stores.

a) Appliance (employing not more than five (5) persons in repair or servicing).

b) Athletic and sporting goods.

c) Business machines.

d) Clothing and clothing accessories.

e) Confectionery and soda fountain.

f) Delicatessen.

g) Drug.

h) Dry goods.

i) Furniture (employing not more than five (5) persons in repair or servicing).

j) Grocery or meat market.

k) Hardware.

l) Jewelry.

m) Farm, garden and nursery supply stores.

n) Leather goods.

o) Liquor (package).

p) Music, radio and television stores and repair. There shall be no loudspeakers on the streets.

q) Notions.

r) Optician and Optometrist.

s) Photographic (equipment and supply).

t) Shoe.

u) Stationery.

v) Variety.

24. Studios.

a) Artist, dance and music (for instruction only).

b) Photography.

25. Other uses which, after a public hearing, the Board of Appeals shall find are of the same general character as those listed above and which will not be detrimental to the district in which they are to be located.

B. MINIMUM SIZE LOTS. No structure shall be hereafter erected, structurally altered, reconstructed or moved on a lot in a Commercial District unless such lot shall conform to the following requirements:

a) If said lot is to be used for residential purposes, it shall have a width, average depth and total ground area of a permissible lot in a Residential "A" District.

b) If said lot is to be used for a business purpose and a sanitary sewer is available, it shall be of such width, depth and total ground area so that any structure to be erected thereon shall occupy no more than forty per cent (40%) of the total ground area, and all yard requirements hereinafter set forth are met. In areas where there are no sanitay sewers, such lot in addition to complying with the foregoing requirements, shall be not less than one hundred (100) feet in width at the building line; have an average depth of one hundred fifty (150) feet; and a total ground area of fifteen thousand (15,000) square feet.

C. YARDS. No structure hereafter erected, structurally altered, reconstructed or moved in a Commercial District shall be nearer than eighty (80) feet to any front lot line, thirty (30) feet from the rear lot line nor twenty (20) feet from any side lot line, except that where the rear or side lot line abuts any lot or land area in a residential district, such structure (unless for a use per-

mitted only under and subject to the provisions of Subdivision A, paragraph 1 of this Section), shall not be located closer than one hundred (100) feet from the line adjoining said residential district and a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

Upon the filing of proper plans, the Zoning Board of Appeals may on application permit a structure to be erected on or in close proximity to one side lot line and/or the rear line provided: (1) the wall of the structure adjoining said lot line shall be a Class "A" Fire wall; (2) the written consent of all property owners adjoining said lot lines is filed with the Board; and (3) said side or rear lot line does not adjoin land in a residential district.

D. MISCELLANEOUS REQUIREMENTS

(a) Any structure, hereafter erected or moved in a Commercial District to be used or occupied solely for residential purposes, shall be subject to all the conditions and restrictions applying to a Residential "A" District.

(b) No other structure, or group of structures, shall hereafter be erected and no structure, land or premises shall be used in a Commercial District unless the following requirements are fully observed:

1. All such operations within a Commercial District, including the storage of equipment, fixed or portable, motor vehicles and of materials, are to be suitably housed and enclosed.

2. No such equipment, fixed or portable, motor vehicles or materials shall be permitted to be stored or displayed nor shall any stands for sale or display be permitted in such a district outside an enclosed building unless a special permit therefor shall have first been obtained from the Zoning Board of Appeals. Such Board may permit the outdoor display or storage of such equipment or materials upon such conditions as it may deem reasonable provided; (1) such storage and display is

an accessory use to the main business conducted or to be conducted on the premises; (2) such storage and display is not within one hundred (100) feet of the line of a residential district; (3) such storage and display is not at such distance from any public highway as to interfere with the safe use of such highway; (4) such storage and display does not unreasonably interfere with the quiet enjoyment of property by adjacent property owners. The fee for the issuance of such a permit shall be Ten Dollars ($10.00). Any permit granted hereunder may be revoked by the Zoning Board of Appeals after due hearing on not less than ten days written notice to the person holding such permit in the event that the holder of such permit violates any of the conditions of the issuance thereof or of this section.

3. All uses within a Commercial District, all structures erected therein and all processes hereafter permitted in said districts shall be so designed and arranged as to prevent noxious gases, fumes, dust, odors, smoke or noises from being discharged to the outside air, in such quantities as to become a nuisance, or any contaminated liquids containing either deleterious, biological compounds or chemical constituents from being discharged into any watercourse.

4. At any time when the specific use originally permitted within a Commercial District is to be changed so that it involves a separate, different and distinct use, process or product, application must be made to the Zoning Board of Appeals for a permit, at which time the Board may require that any and all phases of the operation, which have become or are liable to become detrimental to the neighborhood, be corrected prior to the issuance of such permits.

§ 29-13. Trailer park district.

(a) USES. No structure shall be erected, structurally altered, reconstructed or moved and no structure, land or premises shall be used in any district designated on the Official Zoning Map of the Town of Penfield as a Trailer Park District except for one or more of the following purposes:

1. All uses permitted in a Residential "A" District, subject to all of the conditions and requirements applying to uses permitted in such a Residential "A" District.
2. Trailer parks subject to all of the provisions of the Tourist Camp and House Trailer Ordinances of the Town of Penfield as the same may be in force at the present time and as it may be hereafter amended.
3. Such commercial uses as may be accessory to the operation of a Trailer Park as may be approved by the Zoning Board of Appeals.
4. No addition to any Trailer Park shall be constructed within two hundred and fifty (250) feet of the line of any Residential District, of which area, a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

§ 29-14. Industrial district.

A. PERMITTED USE. No structure shall be erected, structurally altered, reconstructed or moved, and no structure, land or premises shall be used in any district designated on the official zoning map of the Town of Penfield as an Industrial District except for one or more of the following purposes:

1. Any use (other than residential), permitted in a Commercial District subject to the restrictions applicable thereto, and set forth in the provision relating to said District, except only the restriction relating to the number of employees.

2. Customary and ordinary industrial uses which are conducted wholly within a building are permitted. Those uses of lands, buildings, structures or industrial processes that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration or similar substances or conditions or for any other reason may prove dangerous to persons or property, are expressly prohibited.

3. In each case where a building or use is proposed in this District pursuant to the provisions of sub paragraph 2 hereof, the Building Inspector shall refer the plans, description of proposed use, and site plan to the Zoning Board of Appeals. Such Board shall hold a public hearing thereon following the procedure required by law for the granting of variances hereunto and shall determine upon the evidence produced at such hearing: (1) whether all requirements of this ordinance have been met; (2) whether the health, safety, morals or general welfare of the community would be protected and (3) whether said plans should be approved as submitted, approved subject to such conditions, restrictions and safeguards as may be deemed necessary by said Board, or disapproved.

B. LOT SIZE. No structure shall be hereafter erected, structurally altered, reconstructed or moved on a lot in an Industrial District unless such lot shall be of such width, depth and total ground area so that any structure to be erected thereon shall occupy no more than forty per cent (40%) of the total ground area, and all yard requirements hereinafter set forth are met.

C. YARDS. No structure hereafter erected, structurally altered, reconstructed, or moved in an Industrial District shall be nearer than one hundred (100) feet to any front lot line, nor less than fifty (50 feet from any side or rear lot line, except that where the rear or side lot line abuts any lot or land and area in a residential district, such structure shall not be located closer than one hundred (100) feet from the line adjojining said desidential district and a fifty (50) foot strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.

Upon the filing of proper plans, the Zoning Board of Appeals may on application and after the public hearing referred to herein, permit a structure to be erected on or in close proximity to one side lot line and/or the rear lot line provided; (1) such line does not abut premises in a residential district; (2) the wall of the structure adjoining said lot line shall be a Class "A" Fire Wall and (3) the written consent of all property owners adjoining said lot lines is filed with the Board.

D. STRUCTURES. Only one main structure, with accessory buildings may be erected on any parcel of land for a use permitted in this district.

E. SUBDIVISION OF LAND. Whenever the owner of premises in this district, desires to erect more than one structure thereon, he must prepare and file with the Planning Board such a subdivision, complying with the rules and regulations of said Board applying to all realty subdivisions, including a plan of such highways as are necessary to provide for direct frontage on a State, County or Town Highway or on a highway which appears upon a map approved by the Penfield Planning Board. For purposes of this subdivision, direct frontage is defined as ownership in fee and not access by way of easement and a frontage of sixty (60) feet shall presumptively be sufficient for that purpose.

§ 29-15. Provisions applicable to all districts.

1. LOT AREA. No lot in any District shall be so reduced in size that its area or any of its dimensions or open spaces shall be smaller than required by this Ordinance nor shall any part of a lot in any District, required by this Ordinance for any building or use be included as part of a lot similarly required for another building or use.

2. HEIGHTS. No structure, except for farm use, and structures in an Apartment House and Multiple Dwelling District, which shall exceed the height of a two story structure as defined in this Ordinance, shall be erected, structurally altered, reconstructed or moved in any District in the Town.

3. DRIVEWAYS. In all Districts, all plans for structures to be erected, altered, moved or reconstructed, and for the use of premises within such districts, shall contain a plan for the proposed driveway access to the premises. No such plan shall be approved unless such driveway access is onto a dedicated public highway or a highway within a subdivision which appears upon a subdivision map approved by the Planning Board. All such plans for structures or uses, other than for a one or two family dwelling, or for farm or dairy structures or uses, shall contain provisions for a separate paved entrance and exit driveway with a minimum width of eight (8) feet, or if a single driveway is provided, the same shall be sixteen (16) feet in width, and marked with a suitable sign "Double Driveway".

4. OFF-STREET PARKING

A. The following parking spaces (9' x 20') shall be provided and satisfactorily maintained by the owner of the property on the premises or in convenient connection therewith for each building which, after the date when this ordinance becomes effective, is erected, enlarged or altered for use for any of the following purposes:

(1) DWELLING: At least one parking space for each dwelling unit.

(2) PROFESSIONAL OFFICE OR CUSTOMARY HOME OCCUPATION: Six (6) parking spaces for each person engaged in the profession or home occupation.

(3) THEATER, CHURCH OR OTHER PLACE OF PUBLIC ASSEMBLAGE: at least one (1) parking space for each three (3) seats, based on maximum seating capacity.

(4) RESTAURANT OR OTHER EATING PLACE: At least one (1) parking space for each three (3) seats, and one (1) parking space for each employee.

(5) HOSPITAL, SANITARIUM, NURSING HOME, ETC.: At least one (1) parking space for each four (4) patients, and one (1) parking space for each employee, attendant or member of the staff.

(6) COMMERCIAL DISTRICTS: All uses in commercial districts except office buildings, shall provide eight (8) parking spaces for each one thousand (1,000) square feet of gross building floor area exclusive of covered sidewalks or malls. [Amended 10-2-67]

(7) OFFICE BUILDINGS: At least one (1) parking space for each two hundred and fifty (250) square feet of office floor area.

(8) INDUSTRIAL BUILDING: At least one (1) parking space for each four hundred (400) square feet of gross floor area, or for each two (2) workers, whichever provides the greater amount of parking space.

B. The recurrent parking of any vehicle on the right-of-way of a highway or the impeding of traffic or creation of traffic hazards by the parking of any such vehicle shall be prima facie evidence of the failure to provide adequate and suitable parking area on the premises or in convenient connection therewith.

5. NIGHT ILLUMINATION. Where any use in any District, other than for a dwelling for one or two families or for a farm or dairy use, involves operation between the hours of one-half hour after sunset and one-half hour before sunrise, proper exterior illumination of suitable intensity as approved by the Building Official shall be provided at each entrance and exit and along each side of any building so used.

6. JUNK YARDS. No lot in any District may hereafter be used nor any structure erected, reconstructed, structurally altered or moved in any District for use as a junk yard where two or more abandoned automobiles are stored or dismantled for sale of used parts thereof or where junk of any kind or nature such as papers, metals, rags, any second-hand material, lumber or building materials are stored or offered for sale.

7. ROADSIDE STANDS. Any person within any District may erect a roadside stand and sell from same agricultural products produced primarily on his premises. Any such stand of permanent construction shall comply with all the conditions and regulations prescribed for structures in the District in which the stand is located. Any such stand of temporary construction may be erected not nearer to a street line than twenty (20) feet and such stand may be erected and maintained between April 1st and November 30th of any year, but must be removed on or before November 30th of the same year. There must be provided for any roadside stand an off-street parking area sufficient to accommodate vehicles of customers and to eliminate traffic hazards.

8. TEMPORARY STRUCTURES. No structure of a temporary character, basement, tent, shack, garage, barn or other building shall be used on any lot at any time as a residence either temporarily or permanently.

9. CLEAR VIEW AT INTERSECTING STREETS. No obstruction to view between a height of two and one-half (2½) and

ten (10) feet, measured perpendicularly from the street grade, shall be maintained on the premises in the angle formed by intersecting streets so as to interfere with the view of traffic approaching the intersection within the distance of one hundred (100) feet measured along the center line of each street from the intersection of such center lines.

10. FENCES AND HEDGES

(1) No fence, solid hedge or solid shrubbery over three (3) feet in height shall be erected or maintained within twenty (20) feet of any highway line.

(2) The provisions of this section shall not apply to fences on premises used for farm purposes.

11. SITE-PLAN REVIEW [Added 9-7-65]

Prior to issuing a building permit for the construction of a building on a lot in any district, except for a one-family dwelling, the Building Official shall refer the site plan of such lot to the Planning Board for its review and approval. This review shall include, but is not limited to the following:

(1) Adequacy and arrangement of vehicular and pedestrian traffic access and circulation;

(2) Location arrangement and sufficiency of off-street parking;

(3) Location of the building or buildings on the premises;

(4) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a buffer between these and adjoining lands; and

(5) In the case of an apartment house or multiple dwelling, the adequacy of usable open space, including recreational areas.

(6) Adequacy of the provision for the disposal of stormwater and sanitary wastes.

Except for one-family dwellings, no building permit shall be issued except in accordance with a site plan that has been approved by the Planning Board.

12. STORMWATER SEWER DISTRICT [Added 9-7-65]

No building permit shall be issued for the construction of a building on a lot in any district unless such lot is within the boundaries of an established stormwater-sewer district or unless an application to annex such lot to an established stormwater-sewer district or to form a stormwater-sewer district to include such lot has been filed with the Town Board.

13. PARKS AND PLAYGROUNDS [Added 5-1-69]

A. Where deemed essential by the Planning Board upon consideration of the particular type of development proposed in the subdivision, and especially in large-scale neighborhood-unit developments not anticipated in the Master Plan, the Planning Board may require the dedication or reservation of areas or sites of a character, extent and location suitable to the needs created by such development for a park or parks, playground or other recreational uses.

B. If the Planning Board determines that a suitable park or or parks of adequate size cannot be properly located in any such subdivision, or is otherwise not practical, the Board shall require as a condition to approval of the subdivision plat a payment to the town of a playground or recreation site and development fee of seventy-five dollars ($75.) per unit, based upon the following schedule of units:

Single-family dwelling	One (1) Unit
Two-family dwelling	Two (2) Units
Multifamily dwelling, apartments, apartment houses or town houses:	
Studio or one-bedroom apartments	One-Third (⅓) Unit
Two-bedroom apartments	Two-thirds (⅔) Unit
More than two-bedroom apartments	One (1) Unit

Such fee shall be paid to the Building Inspector at the time of the issuance of a building permit for new residential or apartment construction. Where a letter of credit is required, the respective fees shall be included in such letter of credit. Such fees shall be paid over to the Town Clerk and shall be deposited by the Supervisor in a fund designated "Capital Fund for Recreational Development" and shall be used exclusively to purchase, acquire, develop and equip park, playground and other recreational areas.

§ 29-16. Signs. [Amended 2-2-70, effective 2-13-70]

A. Purpose and scope. The purpose is to provide standards to safeguard life, health, property and public welfare by controlling location, construction, installation, illumination and maintenance of all signs and sign structures.

It is the further purpose of this ordinance and regulation of signs to control the quality and quantity of signs so as to enhance the businessman's identification and improve the aesthetics of the community.

B. Definition. A "sign" is defined as any outdoor advertising medium, structure or device which advertises, directs or calls attention to any business, article, substance, service or any other thing which is painted, printed, pasted, posted or affixed to any building, billboard, wall, fence, railing,

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natural object or structure of any kind on real property or upon the ground itself.

C. Prohibition of signs.

(1) No signs shall be hereafter erected, placed or maintained at any place in the Town of Penfield except as provided by this code and only after a permit therefor has been obtained in compliance with the provisions of this section.

(2) Notwithstanding provision (1) above, the owner or occupant of premises in any district may erect a sign thereon for the sale of his property or the products raised thereon, without a permit, provided such sign shall be not larger than sixteen (16) square feet, including both sides of double-faced signs.

(3) The use of pennants, banners, spinners, streamers, moving signs, or flashing, glittering or reflective, animated or rotating signs or similar eye-catching devices is not permitted. Preexisting signs in the above category shall conform to this revised regulation immediately upon the adoption of this ordinance. No signs shall consist of pictorial designs or illustrations.

(4) Any sign or billboard directing attention to a business or to products sold elsewhere than on the same lot is prohibited by this ordinance.

D. Procedure for obtaining permit.

(1) A permit to erect, enlarge, place or maintain any sign permitted by this ordinance must be obtained from the Building Official.

(2) Application for a permit which requests a sign not permitted under this ordinance must be presented to the Penfield Zoning Board of Appeals. Upon such an application to the Board, a public hearing shall be held,

with notice of such hearing published in accordance with law. The Zoning Board of Appeals may, after holding such public hearing, grant such variance(s) as it shall determine in accordance with the applicable provision of laws. Before recommending the issuance of such a permit, the Zoning Board of Appeals must find the following facts to be true:

(a) The proposed sign(s) is (are) in harmony with the standards for permitted signs and within the spirit of the ordinance.

(b) The presence of the proposed sign shall not be detrimental to adjacent property.

(c) The proposed sign does not, by reason of its location, create a hazard of any nature to the public in general or to any adjacent owner or occupant.

(d) The proposed sign(s) does (do) not in any way interfere with the lawful enjoyment of the public highway or of adjacent property.

(3) Application for a sign permit shall be made in writing by the owner, lessee or erector and be accompanied by a scale drawing showing dimensions, proposed design, the legend, colors, materials, structural details and a tape or plot location map delineating location of buildings, parking areas, other signs on the same property, frontage of each unit, and/or any fences or other obstructions in relation to the designated location of the proposed sign. Lessee or erector applicants shall evidence approval of owner for such erections.

(4) The fee for the issuance of a sign permit shall be one dollar ($1.) per square foot of sign area. Any additions to an existing sign shall be by permit application, as prescribed above, and be subject to a fee of one dollar ($1.) per square foot for the additional footage of sign area.

(5) Double-faced signs shall be calculated at total area of both sides for purpose of assessing fees. Area of irregular shaped signs or panel signs of individual letters shall be calculated by using the total rectangular area encompassed by the outline.

(6) No permit issued under the terms of this section shall be transferable to any person other than the original applicant without the consent of the Zoning Board of Appeals.

(7) A sign permit shall become null and void if the work for which the permit was issued has not been started within a period of six (6) months after the date of issue of the permit.

E. Standards for permitted signs.

(1) Individual business establishments will be permitted one (1) identification sign except where there is public access to the other side of the building, such as on a corner where there are both front and side entrances on a public street or parking lot providing access to the building, in which case one (1) additional identification sign will be permitted for each entrance. In addition to the above, one (1) freestanding sign may be permitted, but only upon application to and approval by the Zoning Board of Appeals.

(a) Such signs shall be located on the same premises as the business or profession to which they refer.

(b) Such sign(s) shall be securely attached to the buildings or to structurally sound standards.

(c) The total area of such sign(s) on each lot shall not exceed three (3) square feet for each linear foot of building frontage facing toward a street or parking-lot area.

(d) Freestanding sign(s) is (are) not to be located closer to the public way than twenty (20) feet, and no sign shall exceed twenty (20) feet in height above the ground level, nor sixty-four (64) square feet per face of a double-faced sign. A minimum height from ground level to the bottom of the sign panel must be such that there will be no interference with sight distance.

(e) No sign shall be erected in such a manner as to confuse or obstruct the view of any traffic sign, signal or device.

(2) No sign of any size or description, except traffic signs placed by public agencies, may be erected, placed or maintained within the highway limits of any public way within the Town of Penfield. No billboard or sign which now extends into, has been erected in, or suspended over any portion of a public way may remain unless the owner delivers to the Town of Penfield an insurance policy insuring the town against all loss, liability or damage suffered by all persons by reason of the construction or maintenance of such sign, and shall be written at limits of twenty-five thousand dollars ($25,000.) for property damage, fifty thousand dollars ($50,000.) for bodily injuries to one (1) person and one hundred thousand dollars ($100,000.) for bodily injuries for more than one (1) person as a result of one (1) accident.

(3) The Building Official shall require the proper maintenance of all signs, and such signs, together with their supports, shall be kept in good repair. The display surfaces shall be kept neatly painted at all times. The Building Official may order the removal of any sign that is not maintained in accordance with the provisions of this code. Painting, repainting, cleaning or repair maintenance shall not be considered an erection

or alteration which requires a permit unless a structural change is made.

(4) No permit shall be required to change the advertising copy or message on a painted, printed or changeable-letter sign.

(5) Signs in commercial or industrial districts may be illuminated if the illumination is indirect and is so designed and shielded that the light sources do not constitute a possible hazard to traffic and cannot be seen from any adjacent residential district. A New York State Board of Fire Underwriters' Certificate of Approval must be submitted for every electrically illuminated sign.

(6) Regulations applying to motor vehicle supply stations.

(a) One (1) sign on the face of the building identifying name of the station, not to exceed the limits as stated in Subsection E (1) (c).

(b) One (1) pole sign with trademark, nonrotational, not to exceed the restrictions as stated in Subsection E (1) (d).

(c) One (1) accessory sign attached or adjacent to the building indicating services, products, trade information or other information, excluding product advertising, may be permitted on one (1) permanent sign, structure, single-faced, and not to exceed thirty-two (32) square feet in total area.

(7) Political posters. Special permits for political posters and signs may be granted by the Building Official. Such posters and/or signs must be removed within ten (10) days after election.

(8) Signs for the internal control of traffic, including entrance and exit types, may be necessary in some

eases and permits therefor may be issued by the Building Official.

(9) Signs during construction or in connection with a real estate development may be permitted for a temporary period of not more than six (6) months, provided such sign does not exceed thirty-two (32) square feet. The fee for the issuance of a permit for such a sgn shall be ten dollars ($10.). Any such permit may be renewed for additional periods of like duration under the same procedures and conditions and for a like fee as required for the original permit.

(10) Shopping plazas and industrial areas are permitted one (1) major identification sign on application to the Zoning Board of Appeals.

(11) The use of "A" frame or removable curbside signs is prohibited except those used for real estate sales pertaining to available lots and houses within the Town of Penfield, and these are not to exceed six (6) square feet per side or a total area not to exceed twelve (12) square feet. Any existing signs not conforming to this provision shall be removed upon adoption of this ordinance.

(12) The discontinuance of business at any given location shall require the removal within fifteen (15) days of all signs relating to said business.

F. Existing signs.

(1) Any sign(s) or billboard existing and erected before the adoption of this Sign Ordinance which is nonconforming and for which no permit was issued shall be removed within six (6) months from the effective date of this ordinance.

(2) Any sign existing and erected before the adoption of this Sign Ordinance which is nonconforming and for which a permit was issued shall be removed within two

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(2) years from the effective date of this ordinance, except that in no event shall such an existing sign be required to be removed less than ten (10) years from the date of issuance of the permit.

G. Penalties for violation.

(1) Violations of the requirements of this ordinance are subject to the penalties as set forth in § 29-27 of the Zoning Ordinance.

(2) The Building Official shall have the authority to enforce the removal of any signs that are in violation of this ordinance. Failure to comply with this written order within ten (10) days shall be considered a violation. If after thirty (30) days from date of such notice the objectionable sign has not been removed, the Town of Penfield shall have the authority to remove such sign and will charge the owner for the cost of the removal.

(3) Prior to this action, the owner of the sign may request a hearing before the Zoning Board of Appeals, and no action will be taken by the town until a decision has been rendered by the Zoning Board of Appeals.

H. Severability provisions. If any section, subsection, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

§ 29-17. Filling of land and dumping of waste material.

A. The use of stone, brick, building blocks, gravel, fill dirt or top soil, whether originating on the premises or elsewhere, for the purpose of filling to establish grade and/or to improve the front, side or rear yard areas of an existing structure or of a proposed structure for which a building permit has been issued, is hereby

permitted in any district within the Town of Penfield, provided that any area where stone, brick, gravel and fill dirt are deposited shall within a reasonable time be covered with at least one (1) foot of clean nondeleterious top soil and seeded with a permanent pasture mixture or other fast-growing surface vegetation, and that such reseeding shall continue until growth has been established. Reasonable time as herein used shall be construed to mean no later than the end of the next natural planting season following the commencement of said filling operation.

B. The dumping of any material not expressly permitted in Paragraph A of this section is hereby declared to be the dumping of waste material and is prohibited in all districts in the town except under a permit therefor issued by the Zoning Board of Appeals after a public hearing thereon.

C. Before issuing a permit hereunder, the Zoning Board of Appeals shall find the following facts based upon the evidence produced at the public hearing or submitted to it or upon personal observation of members of the Board:

1. The granting of such permit is in the public interest to establish grades or improve the premises in question.
2. The proposed operation does not create a public hazard.
3. The proposed operation will not be detrimental to adjacent property nor unduly interfere with the quiet enjoyment of adjacent property.
4. Adequate plans have been presented to show that the material or substance so deposited is to be leveled off as soon as deposited; dust preventative or similar material is to be used and applied to prevent dust and sand from flying or being carried from said premises during and on the completion of said operation; sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance; and when the operation is completed the material will be covered with at least one (1) foot of clean non-

deleterious top-soil within a reasonable time thereafter and seeded with a permanent pasture mixture or other fast growing surface vegetation and that such reseeding is to continue until growth has been established.

5. The Zoning Board of Appeals may require as a condition for the issuance of such a permit that the applicant file with the Town a surety company bond in an amount to be fixed by the Board, conditioned upon the compliance of the applicant with the conditions fixed by the Board upon the issuance of said permit, to insure compliance with the provisions of this section.

6. Any such permit issued by the Zoning Board of Appeals shall expire on the 31st day of December following the issuance thereof and may be renewed under the same procedures and conditions required for the original permit.

7. The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars ($25.00).

8. Any permit issued hereunder may be revoked after a hearing upon ten (10) days written notice to the holder of such permit, upon proof presented to the Zoning Board of Appeals that any condition of this section has not or is not at the time of the hearing being complied with.

§ 29-18. Motor vehicle supply stations. [Amended 7-5-67]

(a) The Town Board may, on special application issue a permit for the operation of a motor vehicle supply station in any Commercial District. The Board may require the applicant to submit such information as it may require, and to fix the location of all structures on the premises. No such permit shall be issued

unless a recommendation is first obtained from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find, after public notice and hearing, that:

1. The proposed structures are located consistent with the regulations of the district in which they are to be located, and that the design and type of proposed structure is in harmony with other structures in such neighborhood. [Amended 7-5-67]

2. The proposed use will not create a traffic hazard at the proposed location. To this end a minimum frontage of two hundred (200) feet will be required on any road used for access to the station. [Amended 7-5-67]

3. The applicant has, in writing, agreed to construct and operate such proposed station in strict accordance with such conditions and restrictions as may be imposed by the Town Board. [Amended 7-5-67]

4. The lot area is sufficient to permit construction of the largest station that might be needed in the future. This should at the least provide for four (4) inside bays and parking for fifteen (15) cars, of which ten (10) spaces must be in a screened area behind the station. [Added 7-5-67]

5. All parking and outside storage shall comply with the front, side and rear lot setback requirements. [Added 7-5-67]

(b) Any permit granted hereunder may be revoked by the Town Board after due hearing on not less than ten days notice to the person holding such permit in the event that the use violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit, or shall have become a nuisance.

(c) Any such special permit heretofore granted shall be deemed to be indefinitely extended subject, however, to the power of revocation hereinbefore, and in this section, set forth.

(d) The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars ($25.00).

§ 29-19. Utility or communication installations.

(a) The Town Board may, on special application, issue a permit for the construction and maintenance of a public or private utility or communication structure, as it shall deem essential to the public welfare, and impose such conditions as may be found necessary in the public interest and may modify or vary the restrictions of this Ordinance as to height, size and location of structures applying to the District where such installations is to be located. No such permit shall be issued unless a recommendation is first obtained from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find, after public notice and hearing that:

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1. The proposed installation will not be detrimental to adjacent property.
2. The proposed installation will not by reason of its location or nature, create a hazard of any nature to the public or to any adjacent owner or occupant.
3. The proposed installation will not unreasonably interfere with the lawful enjoyment of the public highways or of adjacent property.

(b) Any such permit granted hereunder may be revoked by the Town Board after due hearing on not less than ten (10) days notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

(c) Any such permit heretofore granted shall be deemed to be indefinitely extended, subject however, to the power of revocation hereinbefore and in this section set forth.

(d) The fee for the issuance of a permit under this section shall be the sum of Twenty-Five Dollars ($25.00).

§ 29-20. Recreational area. [Amended 9-6-66]

(a) The Town Board may, on application, issue a temporary permit for a term which it may specify, for the use of a specified area in any District for a private playground, athletic field, carnival, circus, or other recreational or amusement use, whether operated for profit or not. The Board may require the applicant to submit such information as it may require and may fix the location of all structures on the premises. No such permit shall be issued unless a recommendation is received from the Zoning Board of Appeals. Prior to recommending the issuance of such permit, the Zoning Board of Appeals shall find after public notice and hearing, that the contemplated use will not:

1. Be detrimental to adjacent property.
2. By reason of its location or nature, create a hazard of any nature to the public or to any adjacent owner or occupant.
3. Unreasonably interfere with the lawful enjoyment of the public highways or of adjacent property.

(b) Any permit granted hereunder may be revoked by the Town Board, after due hearing, on not less than ten (10) days notice to the person holding such permit, in the event that the use made thereunder violates any of the conditions of its issuance or shall have become a nuisance and any such permit may be renewed by the said Board for such period as it shall determine, upon application in accordance with the procedures for an original permit.

(c) The fee for the issuance of a permit, or of any renewal thereof, under this section shall be the sum of Twenty-Five Dollars ($25.00).

§ 29-20.1 Swimming pools. [Added 9-6-66, amended 9-5-67]

(a) PRIVATE SWIMMING POOLS are hereby declared to be a permitted accessory use in any Residential District. A permit must be obtained from the Building Department prior to the erection of any private swimming pool, but no such pool shall be constructed or maintained in any district unless:

1. Such pool and any appurtenances, such as aprons or decks, shall conform to the minimum setback requirements for a structure in such District.
2. There shall be erected and maintained a chain-type fence or other similar protective type of enclosure completely enclosing the area containing such pool, such fence or enclosure to be not less than four (4) feet in height above ground level, any fence portion thereof to be securely supported by posts at intervals of not more than eight (8) feet, and permitting access, other than directly from the dwelling, only by a gate that may be securely fastened

and locked. A fence shall not be required in the case of and aboveground pool when the structural walls thereof are at least four (4) feet above ground level, except that any steps leading to the pool deck shall be enclosed by a gate that may be securely fastened and locked. Notwithstanding the foregoing, a fence shall be required if the walls of the pool are so constructed or any appurtenant structures, such as a filtering system, are so located as to provide a means by which the wall of this pool can be climbed and entry gained to the deck of the pool.

3. There is a sufficient source of water supply to accommodate such pool without detriment to normal water consumption requirements and all proposed water connections are proper and adequate.

4. The proposed drainage of such pool is adequate and will not interfere with the public water supply system, with existing sewage and drainage facilities, with the property of others or with public highways.

5. A suitable filtering system is installed in pools requiring in excess of one thousand seven hundred sixty (1,760) gallons of water to fill. [Approximately ten (10) feet diameter by thirty-six (36) inches deep]

(b) GROUP SWIMMING POOLS. No group swimming pool shall be constructed or maintained in any district unless a special permit therefor is granted by the Town Board, except that permits for swimming pools to be erected in connection with apartments or motel structures may be issued by the Building Department. No such permit shall be issued unless a favorable recommendation is received from the Zoning Board of Appeals which, after a public notice and hearing, has found that the proposed pool will not:

1. Be detrimental to adjacent property.

2. By reason of its location or nature create a hazard of any nature to the public or to any adjacent owner or occupant.

3. Unreasonably interfere with the lawful enjoyment of the public highway or of adjacent property.

4. Violate any standards and requirements of the State of New York and the Monroe County Health Department.

Any permit granted hereunder may be revoked by the Town Board, after due hearing, on not less than ten (10) days' notice to the person holding such permit, in the event that the use made thereunder violates any of the conditions of its issuance or shall have become a nuisance.

(c) The fee for the issuance of a permit under this section shall be the sum of one cent ($0.01) per square foot of ground area covered.

§ 29-20.2. Golf courses. [Added 6-7-71, effective 6-27-71]

A. The Town Board may, on special application, issue a permit for the construction and maintenance of a golf course, as hereinafter defined, in any district of the town.

B. "Golf Course" is defined to mean any privately, semi-privately or publicly owned course consisting of at least nine (9) golf holes of conventional design and distance, and may include the following facilities as accessory to the principal use:

(1) Clubhouse, including kitchens, dining areas, game rooms, bar, grill, locker rooms, baths.

(2) Swimming pools.

(3) Parking areas.

(4) Tennis or paddle-ball courts.

C. In the case of a golf course containing eighteen (18) or more holes of play, there may be included the following additional facilities as accessory to the principal use:

(1) Pitch-and-putt course, unlighted.

(2) Driving range, unlighted.

D. No such permit shall be issued unless a recommendation is first obtained from the Planning Board. Prior to recommending the issuance of such a permit, the Planning Board shall find, after public notice and hearing that:

(1) The proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community.

(2) The proposed use would not endanger or tend to endanger the public health, safety, morals or the general welfare of the community. In making such determination, the Board shall consider lot areas; necessity for and size of buffer zone; type of construction; parking facilities; traffic hazards; fire hazards; offensive odors, smoke, fumes, noise and lights; the general character of the neighborhood; the nature and use of other premises, and the location and use of other buildings in the vicinity; and whether or not the proposed use will be detrimental to neighborhood property. Where structures require sanitation facilities, it shall be a requirement that public sewers be available.

(3) The proposed use will be in harmony with the probable future development of the neighborhood, and will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

E. In granting such a permit the Town Board may attach such conditions and limitations as it considers to be desirable in order to insure compliance with the application and the purposes of this ordinance.

F. Subject to the payment of the annual renewal fee, as hereinafter provided, any such permit granted hereunder shall be deemed to be indefinitely extended; provided, however, that it shall expire if the special use shall be terminated, abandoned or cease for more than six (6) months for any reason, or if there is a default in the payment of the renewal fee; and further provided that it may be revoked by the Town Board after due hearing on not less than ten (10) days' notice to the person holding such permit in the event the use thereof violates any of the conditions or restrictions imposed by the Town Board upon the issuance of such permit or shall have become a nuisance.

G. The Town Clerk of the Town of Penfield shall issue a permit to the applicant upon proper resolution by the Town Board and the payment of a fee of one hundred dollars ($100.), and shall issue a renewal annually thereafter in January of each year upon payment of like fee.

§ 29-21. Administration.

This ordinance shall be administered by the Building Official who shall be appointed and may be removed by the Town Board and who shall serve at the pleasure of the Town Board. It shall be the duty of the Building Official to secure the enforcement of this ordinance, subject to the rules, regulations, resolutions and ordinances of the Zoning Board of Appeals and the Town Board, and issue all permits or certificates required by this ordinance.

§ 29-22. Building permits.

No permit for the construction, structural alteration, reconstruction or moving of a structure shall be issued by any official

of the Town of Penfield, unless the application therefor has been certified by the Building Official as apparently complying with this ordinance.

§ 29-23. Certificate of occupancy.

It shall be unlawful to use or to permit the use of any structure hereafter erected, structurally altered, reconstructed, moved or converted wholly or partly in its use, or of any premises here-

after altered or converted, wholly or partly in its use, until a Certificate of Occupancy to the effect that the structure or premises so erected, altered, reconstructed or moved and the proposed use thereof, conform to the provisions of this Ordinance, shall have been issued by the Building Official.

§ 29-24. Zoning Board of Appeals.

a. ORGANIZATION. The Zoning Board of Appeals, heretofore created pursuant to the provision of the Town Law, is hereby continued as now constituted. Each member of said Board shall continue to hold office to the expiration of his present term, at which time the Town Board shall appoint a successor as provided by law.

b. PROCEDURE. The Zoning Board of Appeals, consistent with the provisions of the Town Law applicable thereto, shall determine its own rules of conduct and procedure.

c. POWERS.

(1) REVIEW. Any interested or aggrieved party shall have the right to appeal to the Zoning Board of Appeals from any order, requirement, decision or determination made by the Building Official, and said Board shall thereupon hear and determine the same.

(2) VARIANCES ON APPEAL. The Zoning Board of Appeals shall have the power upon appeal and after public notice and hearing, to vary or modify the application of any of the regulations or provisions of this Ordinance relating to the use, construction, or alteration of structures, or the use of land, where it shall appear that there are practical difficulties or unnecessary hardships in the carrying out of the strict letter of this Ordinance, to the end that the spirit of the Ordinance shall be observed, public safety and welfare secured and substantial justice done.

(3) SPECIAL PERMITS AND VARIANCES. When in its judgment the public convenience and welfare will be serv-

ed and the appropriate use of neighboring property will not be substantially injured thereby, the Zoning Board of Appeals may, in appropriate and specific cases, after public notice and hearing and subject to appropriate conditions and safeguards, vary the application of the regulations of this Ordinance and grant exceptions in harmony with their general purpose and intent, as follows:

(a) Grant a permit whenever it is provided in this Ordinance that approval of the Zoning Board of Appeals is required or refuse to grant the same where such action is justified.

(b) Permit such variation of the yards, lot area or lot width requirements of this Ordinance as may be necessary to secure an appropriate improvement of a parcel of land where such parcel was separately owned or where such parcel was subdivided and recorded in the office of the Clerk of Monroe County at the time of the adoption of this Ordinance and is of such restricted area or exceptional topography that it cannot be appropriately used or improved without such variation.

(c) Permit in any district, such modification of the requirements of these regulations as to height, yards, lot area and lot width, as said Board may deem necessary and proper to secure appropriate development of a lot where adjacent thereto are buildings or structures that do not conform to such regulations.

(d) Permit the extension of a non-conforming use or structure provided such use or structure existed at the time this Ordinance becomes effective.

(e) Permit the extension of a structure or use into a more restricted district immediately adjacent thereto, but not more than fifty (50) feet beyond the boundary line of the district in which said structure or use is authorized.

(f) Permit such modification or variation of the yards, lot area and lot width requirements of this Ordinance as will permit completion of the development of a tract of land according to the Ordinance in effect when such development was first commenced, in instances where a map of a part of such tract has been approved and construction actually commenced prior to the adoption of this Ordinance.

§ 29-25. Appeal from decisions of Zoning Board of Appeals.

Any interested or aggrieved person may appeal to the Town Board from any action, decision or determination of the Zoning Board of Appeals by filing a written notice of such appeal with the Clerk of the Town of Penfield within ten (10) days after such action, decision or determination has been taken or made. The Town Board shall thereafter hear and determine such appeal upon the evidence produced before the Zoning Board of Appeals or upon such new or additional evidence as it shall see fit to receive.

§ 29-26. Amendments.

The Town Board may, from time to time, on its own motion or on petition or on recommendation of the Planning Board, after public notice and hearing, amend, supplement, change, modify or repeal this Ordinance or change the Official Amended Zoning Map, pursuant to the provision of the Town Law applicable thereto. Every such proposed amendment shall be first referred to the the Planning Board for report prior to public hearing thereon.

§ 29-27. Penalties.

Any person, firm, company or corporation owning, controlling or managing any structure or lot wherein or whereon there shall be placed or there exists anything in violation of any of the provisions of this Ordinance; and any person, firm, company or corpo-

EXHIBIT A

ration who shall assist in the commission of any violation of this Ordinance, or of any conditions imposed by the Zoning Board of Appeals, or, who shall build any structure contrary to the plans or specifications submitted to the Building Official and by him certified as complying with this Ordinance; and any person, firm, company or corporation who shall omit, neglect or refuse to do any act required by this Ordinance, shall be guilty of an offense and subject to a fine not to exceed Fifty Dollars ($50.00), or by imprisonment for a period not exceeding six (6) months, or both such fine and imprisonment, or by a penalty of Five Hundred Dollars ($500.00) to be recovered by the Town of Penfield in a civil action. Each week that such violation, disobedience, omission, neglect or refusal shall continue, shall be deemed a separate offense. In addition to the remedies hereinabove set forth, the Town Board may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, demolition, moving and/or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or premises, or to prevent any illegal act, conduct, business or use in and about such premises.

§ 29-28. Repeal of Existing ordinances.

All rules, regulations and ordinances of this Town, inconsistent herewith, are hereby repealed as of the date this Ordinance takes effect, except that this Ordinance does not repeal, abrogate or impair conditions now existing or permits previously issued relating to the erection or alteration of structures or the use of the premises but whenever this Ordinance imposes greater restrictions upon the erection or alteration of structures or the use of the premises than required by existing provisions of law, ordinances, regulations or permits, the provisions hereof shall control insofar as the same is legally permissible.

§ 29-29. Effective date.

This Ordinance shall take effect immediately upon it passage, publication and posting of notice of adoption thereof, as prescribed by law, or by personal service of a certified copy hereof.

2940

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing

NOTICE OF MOTION TO DISMISS COMPLAINT

Civil Action
1972-42

TO: Robinson,Williams,Robinson and Angeloff
Attorneys for Plaintiffs
700 Reynolds Arcade Building
Rochester, New York 14614

PLEASE TAKE NOTICE that upon the annexed affidavit of James M. Hartman, sworn to the 30th day of March, 1972, the undersigned will move this Court at a Motion Term thereof to be heard at the Federal Building, Church and Fitzhugh Streets, in the City of Rochester, New York, on the 24th day

NOTICE OF MOTION TO DISMISS COMPLAINT

of April, 1972, at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an Order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure for the following relief:

1. To dismiss the action on the ground that this Court does not have jurisdiction over the subject matter of this action pursuant to Rule 12(b)(1).

2. To dismiss the action on the ground that the complaint fails to set forth a claim upon which relief can be granted pursuant to Rule 12(b)(6).

The undersigned will further move this Court, in the alternative, for an Order pursuant to Rule 12(e) for a more definite statement of the complaint on the ground that the same is too vague, general and indefinite to apprise the defendants

NOTICE OF MOTION TO DISMISS COMPLAINT

of the nature of the claim and enable them to frame a responsive pleading.

PLEASE TAKE FURTHER NOTICE that the undersigned will move at the time and place aforesaid for an Order pursuant to Rule 23(c)(1) determining that this action has been improperly instituted as a class action and should be dismissed on the ground that the same does not meet the requisites set forth in Rule 23 for a class action.

HARRIS, BEACH AND WILCOX
Counsel to Andrew V. Siracuse, Esq.
Attorney for Defendants
Office and Post office Address
Two State Street
Rochester, New York
14614
716-232-4440

By/s/James M. Hartman
A member of the firm

DATED: Rochester, New York
March 30, 1972

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - -

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, et al.,

Plaintiffs

-against-

IRA SELDIN, Chairman, et al.,

Defendants.

- - - - - - - - - - - - - -

MOTION TO DISMISS COMPLAINT

Civil Action 1972-42

Defendants move this Court to dismiss this action for the reason that the Court lacks jurisdiction over the subject matter of the action for the reason that none of the plaintiffs has standing to bring this suit and none of the defendants has any interest in the subject matter of the suit and that the defendant Metro-Act, Inc., is an improper party plaintiff and for the further reason that

the complaint fails to show the existence of an actual controversy between the parties of the nature required by Article III of the United States Constitution and Section 2201 of the Judicial Code, Title 28; and defendants further move the Court to dismiss this action for the reason that the plaintiffs have failed to state a claim upon which relief can be granted as required pursuant to Section 12(b))6) of the Federal Rules of Civil Procedure for the reason that plaintiffs have failed to set forth a short and plain statement of the claim showing that the pleader is entitled to relief in accordance with Rule 8 of the Federal Rules of Civil Procedure and the defendants further move in the alternative for an Order pursuant to Section 12(e) directing a more definite statement for the reason the complaint

herein is so vague and ambiguous that defendants cannot be reasonably required to frame a responsive pleading in that no time, date, place or act has been alleged; and the defendants further move for an Order pursuant to Rule 23 (c)(1) determining that this action has been improperly commenced as a class action for the reason that plaintiffs have failed to show that the class is so numerous that joinder of all members is impractical, that there are questions of law or fact common to the class, that the claims or defenses of the representative parties are typical of the claims or defenses of the class and particularly with reference to Rule 23(b)(2) under which the action is purported to have been commenced that the party opposing the class has acted or

refused to act on grounds generally applicable to the class thereby making appropriate and final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

HARRIS,BEACH AND WILCOX
Counsel to Andrew V.
Siracuse, Esq.
Attorney for Defendants
Office and Post
Office address
Two State Street
Rochester, New York
14614
716-232-4440

By/s/James M. Hartman
A member of the firm

DATED: Rochester, New York
March 30, 1972

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -

ROBERT WARTH, Individually
and on behalf of all
other persons similarly
situated, et al.,

Plaintiffs,

-against-

IRA SELDIN, Chairman, et al.,

Defendants.

- - - - - - - - - - - - - - - - - -

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

JAMES M. HARTMAN, being duly sworn, deposes and says:

1. I am a member of the firm of Harris, Beach and Wilcox, of counsel in this litigation to Andrew V. Siracuse, Esq., attorney for the Town of Penfield, New York, and I submit this affidavit in support of the defendants' motion, pursuant

to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the complaint on the ground that this Court lacks jurisdiction over the subject matter of this case and that the complaint fails to set forth a claim upon which relief can be granted and, in the alternative, pursuant to Rule 12(e) for a more definite statement of the complaint.

2. This is a class action brought against the Town of Penfield, New York, and various officers and agencies thereof, pursuant to Title 42, United States Code, Sections 1981, 1982,1983 and 1984, and pursuant to Title 28, United States Code, Section 2201, as well as the First,Ninth and Fourteenth Amendments to the Constitution of the United States. Under attack in this lawsuit are the zoning laws and practices of the defendants herein,

on the ground that they are discriminatory and exclusionary. The relief sought is a judgment declaring the zoning ordinance of the Town of Penfield null and void under the aforesaid statutes and Constitution of the United States; enjoining the aforesaid defendants from enforcing the same; compelling them to enact a nonexclusionary zoning ordinance and granting damages in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00).

3. The plaintiffs have brought this action on behalf of themselves and other persons similarly situated, pursuant to Federal Rules of Civil Procedure 23(b)(2).

4. Plaintiffs Robert Warth, Lynn Reichert, Victor Vinkey and Katherine Harris have alleged that they are property owners and taxpayers of the City of Rochester and it is as such that they claim standing

to sue herein, although the City of Rochester is not a party to this action. The complaint does not allege any direct injury resulting to any of these plaintiffs as a result of the land-use laws and practives of the Town of Penfield. They have not alleged any measurable appropriation or disbursement of tax monies by the Town of Penfield which they seek to challenge. Although suing herein as taxpayers, they do not allege any genuine, good-faith, dollars-and-cents injury to themselves, or any other injury which singles any of them out from the general run of mankind.

5. Plaintiff Andelino Ortiz alleges, in addition to being a property owner and taxpayer of the City of Rochester, that "he is employed in the Town of Penfield, New York, but has been excluded

from living near his employment as he would desire by virtue of the illegal, unconstitutional and esclusionary practices of the Town of Penfield." The complaint does not set forth any right of plaintiff Ortiz which is alleged to have been infringed, although the complaint does contain the implicit assertion that the Constitution of the United States guarantees satifaction of a "desire" to reside in the Town of Penfield.

6. There is no allegation in the complaint that plaintiff Ortiz has ever attempted to take up residence in the Town of Penfield; nor does the complaint allege what laws of the Town of Penfield or what practices of the defendants herein have frustrated his desire to take up residence in the Town of Penfield.

7. Plaintiffs Clara Broadnax,

Angelea Reyes and Rosa Sinkler allege that they are residents of the City of Rochester and are persons of low and moderate income, who cannot afford to live in the Town of Penfield. They seek a declaration that the Town of Penfield's zoning ordinances exclude them from residing within the Town and are, therefore, unconstitutional. As with plaintiff Ortiz, the complaint fails to set forth the basis of any legal right enjoyed by these plaintiffs, other than to imply that any person who wishes to reside in the Town of Penfield possesses a constitutional right to do so. As with plaintiff Ortiz, there is no allegation that any of these plaintiffs has made an effort to take up residence in the Town of Penfield; nor, other than citing the entire Zoning Ordinance of the Town of Penfield, has the complaint alleged

any local laws of the Town of Penfield or any practices of the defendants herein which have frustrated the desire of any of these plaintiffs to take up residence in the Town of Penfield or which have injured any of them in any other way.

8. While the complaint alleges discriminatory and exclusionary practices, no particular instances of such practices are set forth; there is no recitation of times, dates, persons or agencies in connection with such practices. No connection whatever is made between any plaintiff's race, nationality or any other personal characteristic and the claims set forth in the complaint. There is no suggestion that any particular law of the Town of Penfield is discriminatroy on its face; indeed, there is no mention of

any specific local law.

9. Plaintiff Metro-Act of Rochester, Inc. has alleged no facts which would form a basis for standing in this action, or which indicate that it possesses any right or has suffered any injury which has anything whatever to do with the issues in this lawsuit. The complaint merely states that the main purpose of the organization is to alert citizens to problems of social concern and to inquire into the need for low and moderate income housing; and it apparently asserts standing in this case, not on the basis of any right or interest of its own which has been infringed, but rather on the basis of its social conscience and its role as a promoter of the social welfare.

10. This is an inappropriate suit in which to bring a class action. First, a class under Rule 23 of the Federal Rules of Civil Procedure has standing only to the extent that the named parties representing it have standing. Second, the classes involved in this lawsuit are either not so numerous as to prevent joinder of all members of the class, or are so numerous and indefinable as to render it impossible to ascertain who belongs to the class and effectively to give notice to the members of the class. Finally, a class action is wholly unnecessary in this case. Because monetary damages are not allowable in a class action under Rule 23 (b)(2), the only relief which could be granted to these plaintiffs is declaratory and injunctive in nature. If the Zoning Ordinance of the Town of

Penfield were declared unconstitutional, and if the defendants herein were enjoined to adopt a different zoning ordinance, the effect of such relief, both upon the named plaintiffs and those persons whom they seek to represent, would be exactly the same, whether or not this action takes the form of a class action. By converting this lawsuit into a class action, therefore, the plaintiffs achieve nothing, while running the risk of prejudicing those who are found to be members of the class.

WHEREFORE, deponent respectfully requests that this Court grant the defendants' motion in all respects.

/s/ James M. Hartman

Jurat omitted
in printing

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, LYNN REICHERT, VICTOR VINKEY, KATHARINE HARRIS, ANDELINO ORTIZ, CLARA BROADNAX, ANGELEA REYES, ROSA SINKLER, each individually and on behalf of all other persons similarly situated, and METRO-ACT OF ROCHESTER, INC.,

PLAINTIFFS,

-vs-

IRA SELDIN, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, FRANCIS J. PALLISCHECK, DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield; and the TOWN OF PENFIELD, NEW YORK

Defendants,

Civil Action No. 1972/42

NOTICE OF MOTION

NOTICE OF MOTION

ROCHESTER HOME BUILDERS ASSOCIATION, INC.,

Applicant for Intervention.

PLEASE TAKE NOTICE that upon the annexed Affidavit of Sanford J. Liebschutz, sworn to the 28th day of April, 1972, the undersigned will move this Court at a motion term thereof, to be heard at the Federal Building, in the City of Rochester, New York on the 8th day of May, 1972 at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an Order pursuant to Rule 24(b) of the Federal Rules of Civil Procedure for an Order permitting the Rochester Home Builders Association, Inc. to intervene in this action as a party Plaintiff.

NOTICE OF MOTION

LIEBSCHUTZ, ROSENBLOOM,
& SAMLOFF
Attorneys for Applicant
for Intervention
Office and Post Office
Address
101 Powers Building
Rochester, New York
14614

TO: ROBINSON, WILLIAMS,ROBINSON AND ANGELOFF
Attorneys for Plaintiffs
Office and Post Office Address
700 Reynolds Arcade Building
Rochester, New York 14614
716-454-1990

HARRIS, BEACH & WILCOX
Counsel to ANDREW V. SIRACUSE
Attorneys for Defendants
Office and Post Office Address
2 State Street
Rochester, New York 14614
716-232-4440

ANDREW SIRACUSE, ESQ.
Attorney for Defendants
Office and Post Office Address
601 Executive Office Building
Rochester, New York 14614
716-325-7700

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title
Omitted
In
Printing

Civil Action
No.
1972/42

MOTION TO
INTERVENE
AS
PLAINTIFF

Rochester Home Builders Association, Inc. moves for leave to intervene as a Plaintiff in this action, in order to assert the claim set forth in its proposed Complaint of which a copy is hereto attached, on the ground that there are common questions of law and/or fact between the claims of the Plaintiffs and the claim of this Applicant for Inter-

vention.

/s/ Sanford J. Liebschutz
Liebschutz, Rosenbloom
& Samloff
Attorneys for Rochester
Home Builders Association,
Inc., Applicant for
Intervention
Office and Post Office
Address
101 Powers Building
Rochester, New York 14614
716-546-8240

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title
Omitted
In
Printing

Civil Action
No.
1972/42

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

SANFORD J. LIEBSCHUTZ, being duly sworn, deposes and says:

1. I am a member of the firm of Libeschutz, Rosenbloom & Samloff, attorneys for Rochester Home Builders Association, Inc., Applicant for Intervention, and I submit this affidavit in support of Applicant's motion pursuant to Rule 24(b) of the Federal Rules of Civil Procedure for permission to

intervene in this action as a party plaintiff on the ground that there are common questions of law and/or fact between the claims of the Plaintiffs and the claim of the Applicant for Intervention.

2. Plaintiffs bring this action individually and as a class action against the Town of Penfield, New York, and various officers and agencies thereof, pursuant to Title 42, United States Code, Sections 1981, 1982, 1983 and 1984 and pursuant to Title 28, United States Code, Section 2201 as well as the First, Ninth, and Fourteenth Amendments to the Constitution of the United States. This action attacks the zoning laws and practices of the Defendants on the ground they are discriminatory and exclusionary. The relief sought is a judgment declaring

the zoning ordinance of the Town of Penfield null and void under the aforesaid statutes and the Constitution of the United States; enjoining the aforesaid Defendants from enforcing same; compelling the Defendants to enact a non-exclusionary ordinance, and granting damages in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00) to Plaintiffs.

3. The Rochester Home Builders Association, Inc., in the Complaint annexed hereto, asserts similar and common claims. As a trade association and representative of its members, the Rochester Home Builders Association allege that they have been subject to the same discriminatory and exclusionary zoning practices as alleged in Plaintiffs' Complaint, and as a result thereof have

been unable to construct housing and provide same for all of the metropolitan Rochester area population which is entitled to the opportunity to purchase such housing, and that specifically members of the Rochester Home Builders Association have been denied relief from such zoning ordinances permitting them to construct such housing.

4. By examination of the Complaint of the Plaintiffs and the Complaint of the Application for Intervention, it will be seen that the basic thrust of both actions is to declare null and void the zoning ordinances and the exclusionary zoning practices of the Town of Penfield and direct that a new ordinance be prepared. Since the members of the Applicant for Intervention have constructed substantially all of the sale and rental, single family

and multi-family housing units in the Town of Penfield as well as the Metropolitan Rochester area over the past 15 years, they represent a party who would be most affected by the continuing exclusionary zoning practices of such Town as well as any reformation of such pract

WHEREFORE, deponent respectfully requests that this Order grant Applicant's motion in all respects.

/s/Sanford J. Liebschutz
Sanford J. Liebschutz

Jurat
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printing

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROCHESTER HOME BUILDERS ASSOCIATION, INC.,

Plaintiff,

-vs-

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield and the TOWN OF PENFIELD, NEW YORK,

Defendants.

- COMPLAINT

Plaintiff, above named, by its attorneys, Liebschutz, Rosenbloom & Samloff, as and for its Complaint against the Defendant, alleges:

INTERVENOR COMPLAINT

FIRST: This is an action for declaratory judgment, injunctive relief and money damages pursuant to Title 42 USC 1981, 1982, 1983 and pursuant to Title 28 USC 2201, and for damages and other relief based upon certain pendant and ancillary common law and statutory causes of action. Jurisdiction is conferred upon this Court by Title USC 1331, 1343 and 2201. In addition the Court has pendant and ancillary jurisdiction over several causes of action herein contained.

SECOND: Now and at all times hereinafter mentioned, Plaintiff was and is a corporation organized under the Not-for-Profit Corporation (formerly Membership Corporation) of the State of New York. The purposes for which it was formed were, among others, to be a non-profit trade association, representative of those per-

sons and companies engaged in construction, development and maintenance of residential housing in the County of Monroe and adjacent and surrounding counties, and those persons, firms and corporations engaged in ancillary occupations thereto; to foster and promote the housing industry; to effect civic development and procure even and just taxation; to promote and encourage provision for adequate housing for all members of the community. Plaintiffs office is located in the City of Rochester, New York.

THIRD: Over 110 members of Plaintiff are engaged directly in the business of construction of sale and/or rental housing to the public at large in Monroe County and approximately 10% of its members are presently or in the recent past engaged in construction of, sale and/or rental housing in the Town of Penfield.

During the past 15 years, over 80% of the single family homes, and 90% of the multi-family housing units constructed in the County of Monroe, exclusive of units built by governmental or allied housing units, have been constructed by Plaintiff's members. During the past 15 years, over 80% of the private housing units constructed in the Town of Penfield have been constructed by members of Plaintiff.

FOURTH: Now and at all times hereinafter mentioned, the Defendants Ira Seldin, Chairman, James O. Horne, Malcolm M. Nulton, Albert Wolf and John Betlem are and were the members and do now constitute the Zoning Board of the Town of Penfield as constituted and existing pursuant to Chapter 29 of the Town Code of the Town of Penfield, New

York, adopted by the Town Board of said Town on the 5th day of May, 1962 and subsequently, and the Defendant Ira Seldin is now and was at all times hereinafter mentioned the Chairman of said Zoning Board and as such said Defendants are and were in charge of and/or had authority over the administration of a certain zoning ordinance of said Town of Penfield, all as is more fully hereinafter set forth and of granting variances and exercising other administrative and/or discretionary duties with respect to said zoning ordinance and as such they and their predecessors participated in and were responsible for the activities, actions, events and circumstances hereinafter set forth.

FIFTH: Now and at all times here-

inafter mentioned, the Defendants, James Hartman, John D. Williams, Richard C. Ade and Timothy Westbrook are and were the members and do now constitute the Planning Board of the Town of Penfield, and the Defendant George Shaw is now and was at all times hereinafter mentioned the Chairman of said Planning Board and as such said Defendants and their predecessors in office are and were in charge of and/or had authority over the processing, administration, and approval of certain low and moderate income housing applications in the Town of Penfield, all as is more fully set forth herein, and of granting planning approval and exercising other administrative and/or discretionary duties with respect to said zoning ordianance and as such they par-

ticipated in and were responsible for the activities, actions and events and circumstances hereinafter set forth.

SIXTH: Now and at all times hereinafter set forth, the Defendants, Irene Gossin, Supervisor, Francis J. Pallischeck, Donald Hare, Lindsey Embrey, and Walter W. Peter are and were members of and do constitute the Town Board of the Town of Penfield, Monroe County, New York, and as such they and their predecessors in office have passed and have continued to maintain and refused to alter a certain zoning ordinance in said Town, and they individually and/or through their agents and/or employees have participated in the actions, events, activities and helped cause and create the circumstances hereinafter set forth and complained of.

SEVENTH: Now and at all times hereinafter mentioned, the Defendant Town of Penfield is and was a municipal corporation organized and existing pursuant to the laws of the State of New York and existing within the State of New York and County of Monroe and lying continguous to the territorial boundaries of the City of Rochester, New York.

EIGHTH: Pursuant to state enabling legislation, the Defendants Gossin, Pallischeck, Hare, Embrey and Peter and/or their predecessors in office constituting the Town Board of the Town of Penfield, New York on the 5th day of May, 1962, adopted the zoning ordinance of said Town being and constituting of Chapter 29 of the Town Code of the Town of Penfield of which Sections 29-1 through 29-29 relating to zoning are attached hereto as Exhibit A

and made a part hereof.

NINTH: Said ordinance, both as enacted and/or as administered by the Defendants aforenamed is violative of the Constitution of the United States and/in particular, without intending to limit, the First, Ninth and Fourteenth Amendments thereof, and is further violative of the statutory law of the United States, and, in particular, without intending to limit, 42 USC 1981, 1982, 1983 and 1984.

TENTH: That said ordinance as enacted and/or administered by the Defendants or their predecessors in office, has as its purpose and effect, and in fact, effects and propagates exclusionary zoning in said Town, with respect to excluding moderate and low income single family and multiple unit housing, and as such tends to exclude low income and

moderate income persons from the purchase and/or rental of housing in said Town. The result of such exclusionary zoning is to prohibit Plaintiff's members from constructing and offering for sale or rental, housing to all segments of the community which require housing, particularly those persons of low and moderate income.

ELEVENTH: That said exclusions and/or deprivations accomplished as aforesaid and/or hereinafter stated were caused, created and/or perpetuated by the individual Defendants and others whose identities are presently unknown, acting under color of said zoning ordinance, the New York State enabling statute, and the custome and usage of the State and has subjected the Plaintiff's members to be deprived of certain rights, privileges

and immunities secured by the Constitution and laws of the United States.

TWELFTH: That contrary to the Constitution and laws of the United States as hereinabove and hereinafter set forth, the individual Defendants, and their predecessors in office, have arbitrarily and capriciously and continuously, for a period of over 15 years last past:

A. Administered the provisions of said zoning ordinance by refusing to grant variances, building permits and by use of special permit procedures and other devices, so as to effect and propagate the exclusionary and discriminatory plan, policy, and/or scheme, heretofore referred to; and

B. Have failed to amend, modify or alter or waive the provisions of said

ordinance, including amending, waiving, altering and/or modifying the provisions of the zoning map, the requirements pertaining to setback, minimum lot size, population density, use density, floor area, utilities, traffic flow, and other requirements, so as to effect and propagate the exclusionary and discriminatory policy plan or scheme hereinabove and herafter referred to; and

C. Refused to grant necessary tax abatement or otherise failed as duly constituted legislative and administrative bodies, and through their agents and employees to cooperate with and assist and accommodate applications by Plaintiff's members and others for construction of low and moderate income single family and multiple unit housing in the Town of Penfield; all so as to neglect and

ignore the minimum housing requirements of the population of the Town of Penfield and the metropolitan Rochester area considering the location and movement of local industry, commercial establishments, population, population growth, fluidity and density in the metropolitan Rochester area, and have thereby (a) prevented Plaintiff's members from development, sale and/or rental of housing to all those members of the metropolitan Rochester area who might require housing, and (b) deprived Plaintiffs of substantial business opportunities and profits.

THIRTEENTH: That pursuant to the exclusionary and discriminatory plan, policy and/or scheme heretofore referred to, Defendants have arbitrarily, capriciously and illegally refused Plaintiff's members

and others, legislative and administrative relief from the various provisions of the ordinances, laws and codes of the Town of Penfield heretofore referred to which would have permitted them to proceed with construction for rental or sale of low and moderate income housing, all in violation of the rights of Plaintiff's members and the Constitution and laws of the United States hereinbefore referred to, as a result of which Plaintiff's members have sustained substantial and irreparable harm and damage.

FOURTEENTH: That said ---------- ordinance, scheme, act administration, practices and procedures, are violative of the Ninth and Fourteenth Amendments to the Constitution of the United States in that they deny Plaintiff's members as well as all other citizens of the metro-

politan Rochester area, the inalienable rights retained by them as citizens of the United States as well as due process and equal protection of the law;

FIFTEENTH: That said ordinance and regulation and the enforcement and administration thereof, bear no substantial relationship to the requirements of public health, safety, morals and general welfare of the community at large.

SIXTEENTH: That there is no legal basis under the Constitution and laws of the United States for said ordinace and the actions, activities, plans and schemes hereinbefore set forth.

SEVENTEENTH: That one or more officials of the Town of Penfield have attempted to coerce Plaintiff's members to prevent Plaintiff from bringing this action, and have threatened Plaintiff's

members that if this action were brought, Plaintiff's members would be prevented from doing business in the Town of Penfield and/or would be given great difficulty in obtaining necessary approvals, cooperation and/or appropriate treatment by government officials of said town, which would thus prevent them from carrying out their ordinary and necessary business in due course in said town. As a result of said action, Plaintiff's members are threatened with irreparable harm and damage.

EIGHTEENTH: That by reason of said ordinance and all of the acts, actions, activities on the part of the Defendants and their predecessors in office hereinbefore set forth, Plaintiff's members have been damaged in the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00).

WHEREFORE,Plaintiff respectfully asks this Court for a judgment and Order:

A. Declaring that the housing and land use laws and policies of the Town of Penfield, as embodied in their zoning regulations, building codes, master plan, and all other related ordinances and regulations, and as enacted, enforced and administered by the Defendants to be unlawful, and null and void, as contrary to the statutory Constitution and laws of the United States of America.

B. Enjoining the Defendants and their successors in office from administering and/or enforcing said zoning ordinance, master plan, building code and other regulations.

C. Ordering and directing the Defendants to repeal such laws and enact and administer new laws, ordinances and

regulations, which shall be non-exclusionary in nature, and shall repair and/or alleviate the conditions and effects heretofore complained of.

D. Ordering and directing the Defendants to permit and encourage participation of the Plaintiff and its attorney in the development and completion of said new laws, ordinances and regulations.

E. Ordering and directing Defendants to submit such new laws and regulations to this Courtfor this Court's approval within a reasonable period of time from the date of entry of the Court's Order herein.

F. Granting Plaintiff damages actual or exemplary in the amount of Seven Hundred Fifty Thousand Dollars ($750,000.00).

G. Temporarily and permanently enjoining the Defendants, and all other

officials of the Town of Penfield from interferring with the normal business operations of Plaintiff's members during the pendancy of this action and thereafter, and affirmatively directing Defendants and all other officials of the Town of Penfield to cooperate with and provide all necessary approvals, cooperation and appropriate treatment, to Plaintiff's members in conjunction with their ordinary and usual business conducted in said town.

H. Directing Defendants to pay Plaintiff's reasonable attorneys fees, costs and disbursements of this action.

I. Retaining jurisdiction of this action for a period of time after the adoption of the new ordinances and regulations to ensure equitable and reasonable enforcement thereof, and

J. Granting Plaintiff such other and

further relief as the Court may deem appropriate.

LIEBSCHUTZ, ROSENBLOOM & SAMLOFF
Attorneys for Plaintiffs
Office and Post Office address
101 Powers Building
Rochester, New York 14614
716-546-8240

* * * * * * * * * * *

* * * * * * * * * * * * * * *

Exhibit A

to

Intervenor Complaint,

Copy of Chapter 29 of the Town Code of the Town of Penfield, Sections 29-1 through 29-29 is reproduced as Exhibit A to the original complaint and is omitted here.

* * * * * * * * * * *

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, 265 Castlebar Road, Rochester, New York 14610, Individually and on behalf of all other persons similarly situated,
LYNN REICHERT, 224 Seneca Parkway, Rochester, New York, 14613, Individually and on behalf of all other persons similarly situated,
VICTOR VINKEY, 134 Nunda Boulevard, Rochester, New York 14610, Individually and on behalf of all other persons similarly situated,
KATHARINE HARRIS, 108 Garson Avenue, Rochester New York, Individually and on behalf of all other persons similarly situated,
ANDELINO ORTIZ, R.D. 1 Wrights Road, Box 202, Wayland, New York, Individually and on behalf of all other persons similarly situated,
CLARA BROADNAX, 87 Jefferson Avenue, Rochester, New York Individually and on behalf of all other persons similarly situated,
ANGELEA REYES, 378 Scio Street, Rochester, New York, Individually and on behalf of all other

MOTION AND NOTICE of MOTION

Civil Action No. 1972-42

MOTION AND NOTICE OF MOTION

persons similarly situated, ROSA SINKLER, Apartment 5-F, 10 Vienna Street, Rochester, New York, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC. 277 Goodman Street, North, Rochester, New York

Plaintiffs

-vs-

IRA SELDIN,Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLD, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW,Chairman, JAMES HARTMENT, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Defendants.

Upon the annexed affidavit, plaintiffs above-named, by their attorneys, Robinson,

MOTION AND NOTICE OF MOTION

Williams, Robinson and Angeloff, move the Court for an Order making the Housing Council in the Monroe County Area, Incorporated, a party plaintiff herein and directing the issuance of service of process upon it, and for grounds therefor shows:

1. This an action for declaratory and injunctive releif and for money damages;

2. This action challenges the legality and constitutionality of certain actions of the defendants herein, including the adoption and enforcement of certain zoning ordinances of the Town of Penfield, New York;

3. Housing Council in the Monroe County Area, Incorporated, (hereinafter "Housing Council") is a non-profit corporation organized pursuant to the laws of the State of New York, and its principal

office is located in the City of Rochester, New York; therefore, Housing Council is subject to the jurisdiction of this Court as to service of process and can be made a party plaintiff herein without depriving the Court of jurisdiction;

4. Housing Council's claim in this action arose out of the same transactions and occurrences, and raises the same questions of law and fact, as are already before this Court;

5. That the interests of Housing Council are or may not be adequately represented by the parties to this action.

PLEASE TAKE NOTICE that the within Motion will be heard at the U.S. District Courthouse, Rochester, New York, on the 12th day of June, 1972 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard.

/s/ Emmelyn Logan-Baldwin
Robinson, Williams,
Robinson and Angeloff

TO: HARRIS, BEACH AND WILCOX
Counsel to Andrew V. Siracuse, Esq.
Attorney for Defendants

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title
Omitted
In
Printing

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

JOHN C. MITCHELL, being duly sworn, deposes and says:

1. He is the Executive Director of the Housing Council in the Monroe County Area, Incorporated (hereinafter "housing Council"), and is familiar with its history, composition and purpose.

2. Housing Council is a not-for-profit corporation organized in 1971 pursuant to the laws of the State of New York, and maintains its principal office at 121 North Fitzhugh Street, Rochester,

New York.

3. Housing Council was organized in response to a recommendation contained in a 1970 study prepared by the Rochester Center for Governmental and Community Research and entitled "Housing in Monroe County, New York". This study was prepared for the Metropolitan Housing Committee, which was appointed jointly by the City and County Managers under authorization from the Rochester City Council and the Monroe County Board of Supervisors. The study recommended, inter alia, that a housing council be established, composed of representatives of relevant agencies, institutions and groups interested in housing in order to channel the fragmented and uncoordinated housing efforts in the community into meaningful action.

4. Housing Council's purposes are

set out in Article II of its Constitution, which reads as follows:

> The Corporation shall be organized and operated exclusively for the purpose of receiving, maintaining, or administering one or more funds of real or personal property, or both, and using and applying the whole or any part of the income and principal thereof for the charitable purpose of **combating** community deterioration, eliminating racial and economic prejudice and discrimination in housing and lessening the burdens of government in Monroe County are of New York by:
>
> Section A. Promoting studies of and giving leadership to community planning concerning the problems of:
> 1. eliminating racial and economic discrimination in housing;
> 2. reversing community deterioration;
> 3. increasing the supply of decent safe and sanitary housing in a quality living environment throughout the County and Metropolitan Rochester area for all persons, especially those with low and moderate income;
>
> Section B. Seeking:
> 1. to coordinate the efforts of governmental, public and private organizations which plan to engage in or are presently engaged in construction, rehabiliation or development of adequate housing in the Monroe County area for all persons, especially those with low and moderate incomes and;
>
> 2. to assure that such organizations consider methods of pursuing their housing activities which will lead to elimination of racial and economic discrimination and will tend to reverse community deterioration in the Monroe County area; and
>
> SectionC. Providing or facilitating technical assistance to governmental, public and private organizations which plan to engage in or are presently engaged in planning, constructing, rehabilitating, or developing adequate housing for all persons, especially those with low and moderate incomes; particularly concerning methods of eliminating racial and economic discrimination and reversing community deterioration.

5. The Housing Council's membership is comprised of some seventy-one (71) public and private organizations having an interest in housing. A copy of the charter membership list is annexed hereto as Exhibit "1".

6. At least seventeen (17) of the charter member groups have been involved, are involved, or hope to be involved directly in the development and construction of low and middle income housing; each such organization is indicated on Exhibit "1" by a check mark before its name.

7. Upon information and belief, at least one such group, viz. Penfield Better Homes Corporation, is and has been actively attempting to develop moderate income housing in the Town of Penfield, but has been stymied by its inability to secure the necessary approvals from the defendants in this action.

8. Several of the charter member groups, including the Monroe County Department of Social Services and City of Rochester's Department of Urban Renewal

and Economic Development,and Urban Renewal Agency, are government agencies which have a direct concern with and interest in the provision of low and middle income housing in the County of Monroe and the City of Rochester.

9. The large majority of the charter member groups themselves have membership which are made up primarily of low and moderate income whites and non-whites, and therefore directly represent the interests of such people.

10. Because of the interests of these constituent groups, Housing Council has a special interest in this litigation and is in a unique position to represent the interest of its members.

11. Housing Council has no objection to being made a party plaintiff in this action.

AFFIDAVIT, JOHN C. MITCHELL

/s/ John C. Mitchell
John C. Mitchell

Jurat
omitted
in
Printing

EXHIBIT "1"

Page Seventeen

HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC.

CHARTER MEMBER LIST

1. Action for a Better Community, Inc. (ABC)
2. American Association of University Women, Rochester, New York Branch
3. Asbury First United Methodist Church Housing Committee
4. Association for the Blind of Rochester and Monroe County, Inc.
5. Better Rochester Living, Inc.
6. Bishop Sheen Housing Foundation
7. Brockport Action Task Force on Housing (BATH)
8. The Build Your Own House Club
9. Center for Community Issues Research
10. The Church of the Incarnation Episcopal, Vestry
11. Church Women United in Rochester and Vicinity, Inc.
12. Citizens Planning Council of Rochester & Monroe County, Inc. (CPC)
13. Community Interests Inc.
14. Community Volunteers of Rochester, Incorporated
15. Cooperative Extension Association of Monroe County
16. FIGHT
17. Four Downtown Churches of Rochester, New York, Housing Department of ACCT
18. Frederick Douglass League
19. Genesee Rapids Neighborhood Association
20. Genesee Settlement House
21. Greece Residents Organized to Act (GRO-Act)

EXHIBIT "1"

22. Holy Name of Jesus Parish, Human Development Task Force
23. Housing Opportunity Program Enlistment Incorporated (H.O.P.E.)
24. I.C. Housing Development Fund Company, Inc.
25. The Junior League of Rochester, Inc.
26. Ladies Association for Community Enrichment (L.A.C.E.)
27. Lake Avenue Friendship Corporation
28. League of Women Voters of the Rochester Metropolitan Area
29. Metro-Act of Rochester, Inc.
30. Model Neighborhood Council
31. Monroe County Bar Legal Assistance Corp.
32. Monroe County Department of Social Services
33. Monroe County Planning Council
34. Montgomery Neighborhood Center, Inc.
35. 19th Ward Community Association, Inc.
36. National Council of Jewish Women, Rochester Section
37. New Rochester
38. North East Area Development, Inc. (NEAD)
39. Northeast Property Upgrading Association (NEPUA)
40. Northeast District Council, Inc. (N.E.D.C.)
41. Northwest Housing Task Force
42. Office of Human Development
43. Olean Townhouses
44. Penfield Action for a Creative Tomorrow (PACT)
45. Penfield Better Homes Corporation
46. Penfield Christian Landlords, Inc.
47. Priests Association of Rochester, Social Action Committee

EXHIBIT "1"

48. Rochester Area Committee for Open Housing (RACOH)
49. Rochester Area Council of Churches Development, Inc. and Rochester Area Council of Churches Housing Development Fund Co. Inc.
50. Rochester Jaycees
51. Rochester Housing Authority (RHA)
52. Rochester Management, Inc.
53. Rochester Neighbors, Inc.
54. Rochester Soul Christian Leadership, Inc.
55. Rochester Urban Renewal Agency and City of Rochester, Dept. Urban Renewal & Econ. Development
56. Rochester United Settlement Houses (RUSH), Housing Development Fund Company, Inc. (Harris Park Project)
57. Senior Citizens Action Council Inc. of Monroe County, State of New York (SCAC)
58. Sisters of St. Joseph, Social Concerns Committee
59. South East Area Coalition, Inc. (SEAC)
60. South Area Welfare Rights Group (SEWRG)
61. South Side Seniors (Citizens)
62. St. Thomas Episcopal Church, Christian Social Action (STECCSA)
63. Teen League of Rochester (TL)
64. Temple B'Rith Kodesh, Social Action Committee
65. Third Presbyterian Church, Session
66. Unitarian Housing Committee (First Unitarian Church)
67. WEDGE
68. Webster Council of Churches Housing Committee
69. Webster Human Relations Council
70. Western Monroe Community Project, Inc.
71. Young Womens' Christian Association of Rochester and Monroe County (YWCA)

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

ROBERT WARTH, et al Plaintiffs vs. IRA SELDIN, et al, and THE TOWN OF PENFIELD Defendants	*	AFFIDAVIT Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

ROBERT J. WARTH, being duly sworn, according to law, deposes and says:

1. I am a private citizen residing at 265 Castlebar Road, Rochester, New York. I am the duly elected president of plaintiff Metro-Act of Rochester, Inc. for the year June, 1971 to June, 1972. I make this affidavit in opposition to the defendants' motion to dismiss Metro-Act of Rochester, Inc. as a party plaintiff in

the above noted lawsuit.

2. Metro-Act of Rochester, Inc. is a non-profit organization organized pursuant to the membership corporation law of the state of New York. Among its stated purposes are 1) to achieve democracy for all irrespective of race, religion or national origin; 2) to encourage the Rochester community to provide better housing, better education, greater employment opportunities and to secure human and civil rights for all its residents.

3. Metro-Act was found ed in 1965 as Friends of Fight, Inc. The 1964 race riots in Rochester had vividly brought home to the Rochester metropolitan community the dangers of policies and practices which result in an inner city composed of a concentrated black and other minority population who have no other choices in living except in squalid housing, sending their

children to inferior schools and educational facilities, being subjected to reduced employment opportunities and inferior community services. Following the Rochester riots, the black community in Rochester formed a special action group called FIGHT; Friends of Fight, Inc. (now Metro-Act) was originally composed of white Rochesterians who formed to organize support from the white community of the programs and efforts of FIGHT in the black community. In December of 1968, Friends of Fight became Metro-Act of Rochester, Inc. with the role of Metro-Act being expanded to deal with issues beyond those with which FIGHT and the black community might be concerned. Metro-Act of Rochester, Inc. continues to work in ad hoc coalitions with FIGHT and other social action groups on specific issues.

4. Membership of Metro-Act is presently composed of approximately 350 individuals. The Metro-Act members live in all sections of the Rochester metropolitan area; about 9% of the Metro-Act members live in the Townof Penfield. Members are persons who are dedicated to abhieving social justice and an open society for persons of all races and economic levels.

5.The Metro-Act membership works through task forces to deal with problems of pressing concern to the membership and to the Rochester metropolitan area. Presently, active issues with Metro-Act include housing, environment, tax reform, media responsibility, national priorities, individual freedoms, Community Chest, education and membership. Task forces and committees are established from time to time

as particular needs arise.

6. Metro-Act is working for open housing in the suburbs because, in part, only by providing maximum choice in housing can Metro-Act members and their children be spared an eventual repeat of ghetto confrontations and riots. Metro-Act supports quality, integrated education. Metro-Act members believe that it is to their own children's benefit to learn early in life to come to healthy terms with different races and ethnic groups. Metro-Act is working for tax reform; its membership are the people who must bear much of the burden of increased taxes resulting from large amounts of tax exempt property. Metro-Act's concern over national priorities in opposition to the Southeast Asian war is based partly on the membership's own tax money being used for causes they consider

destructive, unworthy, or of low priority. Metro-Act's work in the area of media responsibility in reporting is based partly on the membership's own self interest. It wants to avoid thought conditioning by the media and avoid the making of judgments from misrepresentation of news. Metro-Act is working for protection of civil liberties and fair treatment of minorities because the loss of one group's freedom threatens each individual's freedom.

7. Since it was organized in late 1965, Metro-Act (originally Friends of Fight) has been involved in working for better housing policies and has been advocating zoning changes which would make decent housing available to all persons, regardless of race or income level. In 1966, Metro-Act compiled a fact sheet outlining the population changes in Rochester

center city and the urgent need for the construction of low income housing in Rochester. The study, attached hereto and made a part hereof as Exhibit A, demonstrated that in terms of relative population, Rochester was far behind other upstate New York cities in providing public housing.

8. The study of need for low income housing was followed by the publication of a survey of land in the City of Rochester owned by the City of Rochester which would be suitable for new housing. The study included a review of land suitability, the availability of sewer and transportation facilities. Copies of the study and relevant correspondence and news articles are attached hereto and made a part hereof as Exhibits B,C and D. At this same time Metro-Act joined as a member of a coalition

to press for zoning changes in the City of Rochester. The coalition was composed of approximately forty (40) Rochester organizations.

In response to a growing awareness that the City of Rochester could not solve its housing problem in isolation from the rest of the county of Monroe, Metro-Act along with its member organizations, at that time, expanded its efforts to focus on the need for the suburban communities of the Rochester metropolitan area, Monroe County, to provide low income housing. In February of 1969, Metro-Act representatives met with various town supervisors and submitted a proposal, Exhibit E attached hereto and made a part hereof, that the suburban towns become involved in a rent subsidy leasing program under Section 23 of the

United States Housing Act of 1937. Low income families could have been benefited by the involvement of the suburban towns in such a program and low income families would thereby have had a greater choice of housing accommodations made available to them in the Rochester metropolitan area.

9. In April of 1970 the Metropolitan Housing Committee, chaired by the late Joseph C. Wilson published its report, Housing in Monroe County, New York. (The summary report is attached hereto and made a part hereof as Exhibit F.) One of the major recommendations of this report was the petitioning of the Rochester City Council, the Monroe County Legislature and the Town and Village Boards for their express public support and adoption of a public policy establishing the 1970's as the decade during which decent housing and

a suitable living environment would be provided to meet the needs of every individual and family in the Rochester-Monroe County area.

10. In response to the Metropolitan Housing Committee's recommendation for a housing council (see page 27 [A 309] of the Summary Report) composed of representatives from interested agencies, institutions, and groups (including, of course, non-profit housing corporations) Metro-Act of Rochester pressed for the formation of such a group. The Housing Council in Monroe County Area, Inc. was formed in summer of 1971 and is presently composed of the organizations and bodies set forth in Exhibit G attached hereto and made a part hereof.

11. Further, Metro-Act of Rochester, Inc. initiated the formation of the

Political Action Committee on the Housing Council. This committee has pressed the Monroe County Legislature for the county to take the responsibility for housing the county. Correspondence in connection with this effort by Metro-Act and the resulting resolutions of the Monroe County Legislature are attached hereto and made a part hereof as Exhibits H, I, J, K, L, M & N. Through the pressures of the Housing Council Political Action Committee on housing, the Rochester City Council as well as the Monroe County Legislature recognized the report of the Metropolitan Housing Committee , "Housing in Monroe County, New York", and the Rochester City Council and Monroe County Legislature respectively pledged their continuing efforts to meet the report's objectives and goals. (Attached hereto and made a

part hereof as Exhibits O through P are copies of release and resolution in connection with the Rochester City Council's recognition of the Metropolitan Housing Committee report.)

12. The report of the Metropolitan Housing Committee , Housing in Monroe County, New York, confirmed for the Rochester metropolitan area the pattern of concentration of non-white population in the Rochester center city and the disbursement of the white, upper class population in the Rochester suburban towns. In 1964, for example, 96.6% of all non-whites lived in Rochester (page 10 [A 276] of Summary Report). The report went on to note that while there is great need for low and moderate income housing,

"The community is left with a special category of housing demand: a demand for equal housing opportunities for non-whites. The complete rejection by the suburban communities of all low and moderate income housing is testimony to the severity of the problem of prejudice involved. While many community groups and agencies - as well as individual citizens - have been working for open housing, their various efforts have proved insufficient. Racial prejudice and discrimination must be considered one of the most serious obstacles to blocking the construction of low moderate income housing where it is needed."

13. The Metropolitan Housing Committee specifically found that the sites available for the construction of low or moderate income housing were available in the towns. (Summary Report, page 19/ [A 294]) At the same time, the Metropolitan Housing Committee found insufficient the present land use control mechanisms employed by suburban towns. (Summary Report, page 17[A 290])

14. Even before actually undertaking this serious and tremendous step of initiating a lawsuit against the Town of Penfield, members of the Metro Act Housing Task Force and officers of Metro Act spoke specifically with Penfield town leaders of the Metro Act concern for the practices, policies and laws which lead to the fact of exclusionary zoning. All during the month of December 1971 and early January 1972, various discussions were conducted between town leaders and Metro Act members. The discussions centered on the precise complaints the Metro Act Task Force members had with the Town of Penfield zoning ordinance with regard to its effect on the construction of low, moderate income housing in the Town of Penfield. In early January, Metro Act members met with town leaders personally. Town leaders suggested that Metro Act

members submit a concrete proposal for change in the Town of Penfield; Metro Act members accepted this suggestion and submitted a proposal,as a basis for discussion, a copy of which is attached hereto and made a part hereof as Exhibit Q. A date was set for a **meeting** with the full town board of Penfield for January 18, 1972. At the request of the Town of Penfield officials, the January 18th meeting was cancelled. I, as Metro Act president, thereafter, talked with Irene Gossin, chairman of the Penfield Town Board, about arranging for a new meeting date and time with the Penfield Town Board to discuss approval and implementation of Metro Act's suggestions. I suggested a meeting at the town board's convenience at any time and at any place. Chairman

Gossin, however, could only suggest a date one month in advance as the earliest meeting date. After making such a tremendous effort to discuss the Penfield housing problems with the Town Board officials and meeting with an attitude of unwillingness on the part of the Town of Penfield officials to consider Metro Act's proposals or even to meet and discuss the proposals, Metro Act members had the clear impression that the objective of the Town of Penfield was to delay indefinitely any real meeting with Metro Act members or a real consideration of the MetroAct proposal. Under the circumstances, there was no other alternative than to initiate this lawsuit.

/s/Robert J. Warth
Robert J. Warth

Jurat omitted
in printing

EXHIBIT A

FACTS ABOUT ROCHESTER HOUSING

(Census figures from 1960 U.S. Census and 1964 Monroe County Special Census)

Rochester has New York State's third largest concentration of Non-whites. Negroes in Rochester: 7,845, in 1950, approximately 35,000 in 1965. About eighty per cent (80%) live in the Third and Seventh Wards.

Population changes in Third and Seventh Wards -- 1960 - 1964

Ward	Non-white in 1960	Non-white in 1964	%change	White in 1960	White in 1964	% change
Third	10,596	14,283	+34.8	12,894	8,129	-37.0
7th	9,026	10,896	+20.7	15,039	11,216	-25.4
TOTAL	19,622	25,179	+28.3	27,933	19,345	-30.7

EXHIBIT A 196

EXHIBIT A

Housing in Third and Seventh Wards in 1960

Ward	No. of Units	Deteriorating and Dilapidated	%Deteriorating and Dilapidated	Shared bath or no bath	Units with more than one person per room
Third	8,120	2,516	31.0	1,158	949
Seventh	7,307	2,942	40.3	474	1,192
TOTAL	15,427	5,458	35.4	1,632	2,141

EXHIBIT A 197

Rentals for non-whites (example)

Census Tract 1964 (Third Ward) 1960 medium gross rent was $68 for whites and $94 for non-whites, or about a 40% increase for non-whites.

EXHIBIT A

Low-income Housing Units Voted or Existing as of 1964

City	1960 Population	No. of Units
Buffalo	532,759	6,787
Syracuse	216,038	2,116
Albany	129,726	1,200
Niagara Falls	102,394	1,118
Utica	100,410	842
Schnectady	81,682	965
Rochester	318,611	668*

A 1962 survey published by the City estimated conservatively that 2,290 families needed low rent, public housing at that time. According to census figures, the inner-city non-white population is growing at a rate of about 2,000 persons a year.

Since 1960, Rochester has demolished over 400 inner-city dwellings through highway construction alone. Present Urban Renewal plans for the Third Ward will involve relocation of another 850 families. Urban Renewal plans being drawn up for the Court Street area and for the Seventh Ward will necessitate relocating many hundreds of additional families within the next few years.

*As of this date, Rochester has built only 392 low-income units. Present plans of the Rochester Housing Authority call for 600 additional units. Of this 600, 127 are to be rehabilited existing units and 197 are Senior Citizens Units. This leaves only 276 new low-income family units now "planned". They will be as follows:

Edith Doran	35	Family Units
45 Duplexes	90	" " (There will be bids in the next couple of weeks.)
Bay Street	33	"
Atlantic Avenue	18	"
Cottage Street	15	"
Hartford Street Area	33	"
Federal Street	6	"
Third Ward	46	"(Scattered on 8-12 sites)
	276	

EXHIBIT A

Total low-income family housing built and planned in Rochester:

Built.....392 units

Planned.....276 units
668

Groups Presently Active

Better Rochester Living -- A non-profit corporation organized to work with families potentially able to buy their own homes. As of May, 1965, 97 applications: 11 dropped for various reasons, 60 preliminary screening and financial counselling, 12 looking for houses, 14 have found houses and are in various stages of financing, etc. (none yet occupied).

Community Interests, Inc. -- In two years over forty (40) families have been helped toward home ownership with loans averaging $800 made to six (6) families.

Family Housing Sponsorship Plan -- Twenty-two (22) large families being sponsored presently by several local churches and groups (mostly through the work of the Rochester Area Council of Churches).

RUSH(Rochester Urban Settlement Housing) -- The five settlements have formed a corporation to build scattered low-middle income housing under 221d3 of the Federal Housing Act. They hope to build 250 units.

Exhibit B

Attachment #3

HOUSING SITE PROPOSAL

Friends of FIGHT, Inc.

Low-income family housing remains a pressing need in the city of Rochester, Estimates of the number of units presently required vary from 15,000 to 30,000. By 1975, proposed community renewal will add 10,000 units or more to this total. The number of public housing units actually built in Rochester is only 447, although more are in a funding or planning stage.
Even with all those presently planned by the Rochester Housing Authority, Rochester ranks seventh in upstate New York for the number of low-income units built -- though it is second in population among upstate cities.

EXHIBIT B

Housing is one of the key issues that continue to foster resentment in the ghetto. In the face of Rochester's present lack of achievement, the black community cannot be expected to wait patiently while those in power say that things are getting better or explain the problems associated with the building of housing.

A massive attack on the housing problems of our community can be justified on moral grounds and on the basis of the city's self-interest. Choose one justification or both, but action must come now.

Friends of FIGHT has studied the availability of housing sites. It has been claimed that land is not available This is not true. City owned land is available which can be used for low-

EXHIBIT B

income housing. We focus attention particularly on four pieces of city owned property, each of which is well suited as a potential location for family living.

Friends of FIGHT calls upon the city administration, and specifically the City Council, to do the following:

1). Designate these four properties as sites for low-income family housing.
2). Enact the required zoning changes.
3). Assert aggressive and creative leadership in dealing with the administrative bottlenecks associated with getting construction started.

On the following pages are maps showing the location of publicly owned land. The

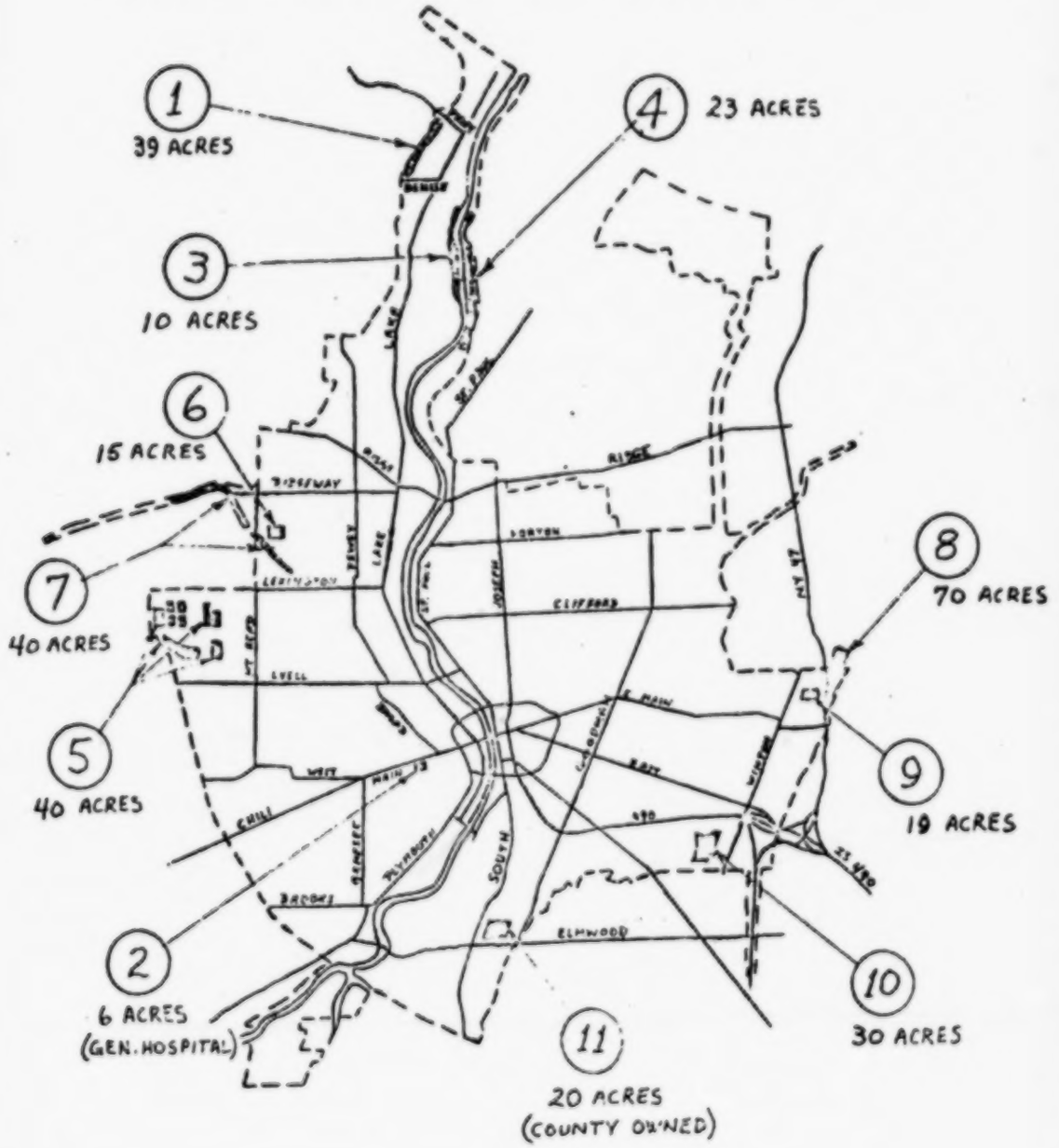
EXHIBIT B

first map shows most of the large blocks of city owned land. Subsequent enlargements show in detail the four sites at issue; attached commentary provides information about factors relative to desirability for housing.

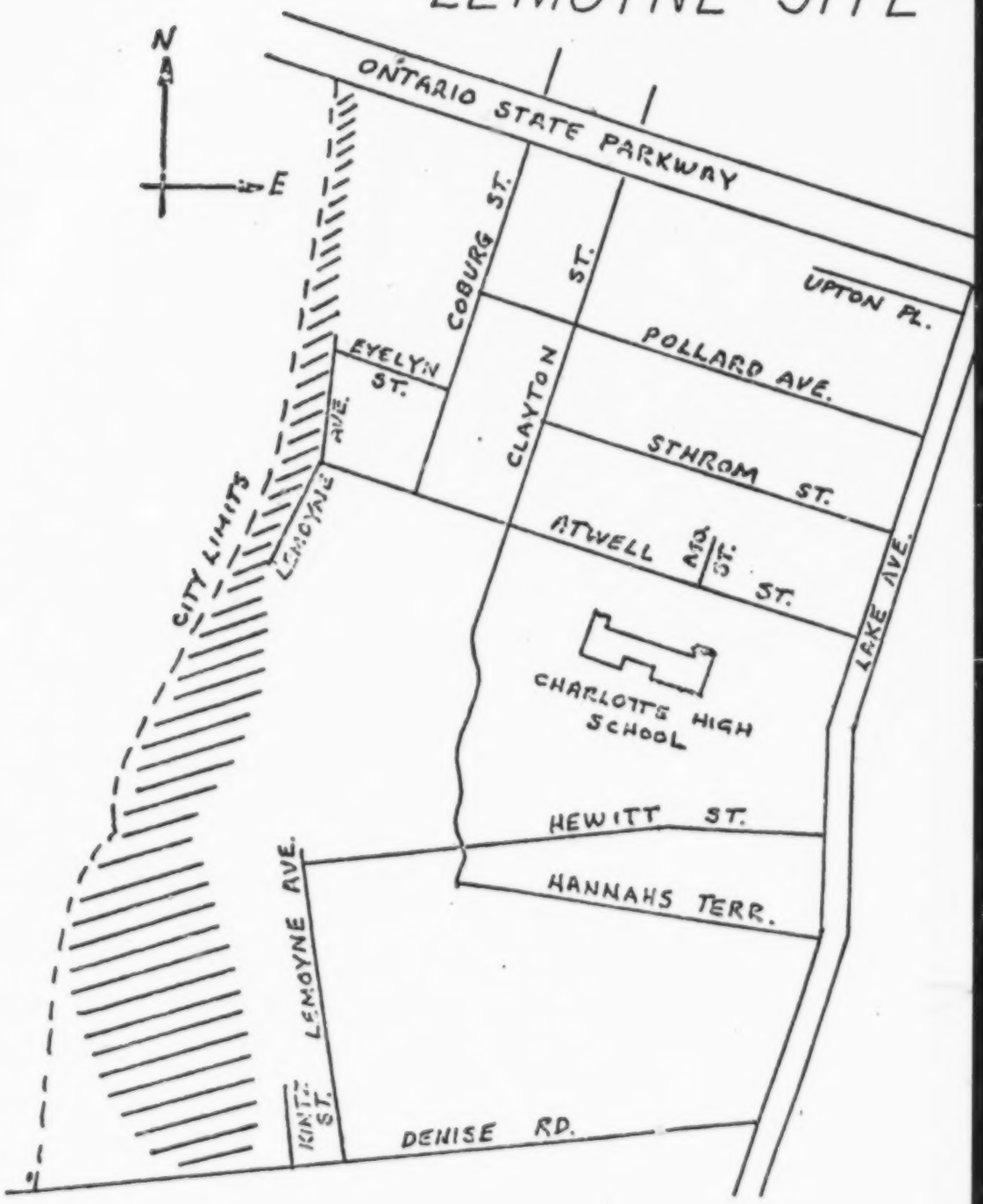
EXHIBIT B

PUBLIC HOUSING SITES.

PART 1. CITY OWNED VACANT LAND



LEMOYNE SITE



SITE # 1 LEMOYNE AVE.

Approximately 39 acres, close to Charlotte High School playing fields, bordering on the city limits from the Ontario Expressway on the north, nearly to Denise Road on the south.
Suitable for up to 400 units at moderate density.

Schools:

School #38; (K-6); had an enrollment of 740 as of 10/6/67; 10.5% non-white.
School #42 is next nearest.
Upper grades served by Charlotte High School.

Transportation:

Near major roads and Ontario Expressway.
Lake Ave. has major bus route.

Shopping:

Adequate shopping facilities are located at Lake and Stutson, less than one mile from the site.

EXHIBIT B

Recreation:

The site includes sufficient acreage for neighborhood recreation facilities, and is adjacent to Charlotte High School fields.

Zoning and Proposed Land Use:

Presently zoned R-1 south of Hewitt St., R-2 north of Hewitt St.; the Comprehensive Master Plan proposes development for predominantly single family housing.

Sewage Facilities:

Major sewer lines available on Lake Ave. .

EXHIBIT B

LA GRANGE SITE

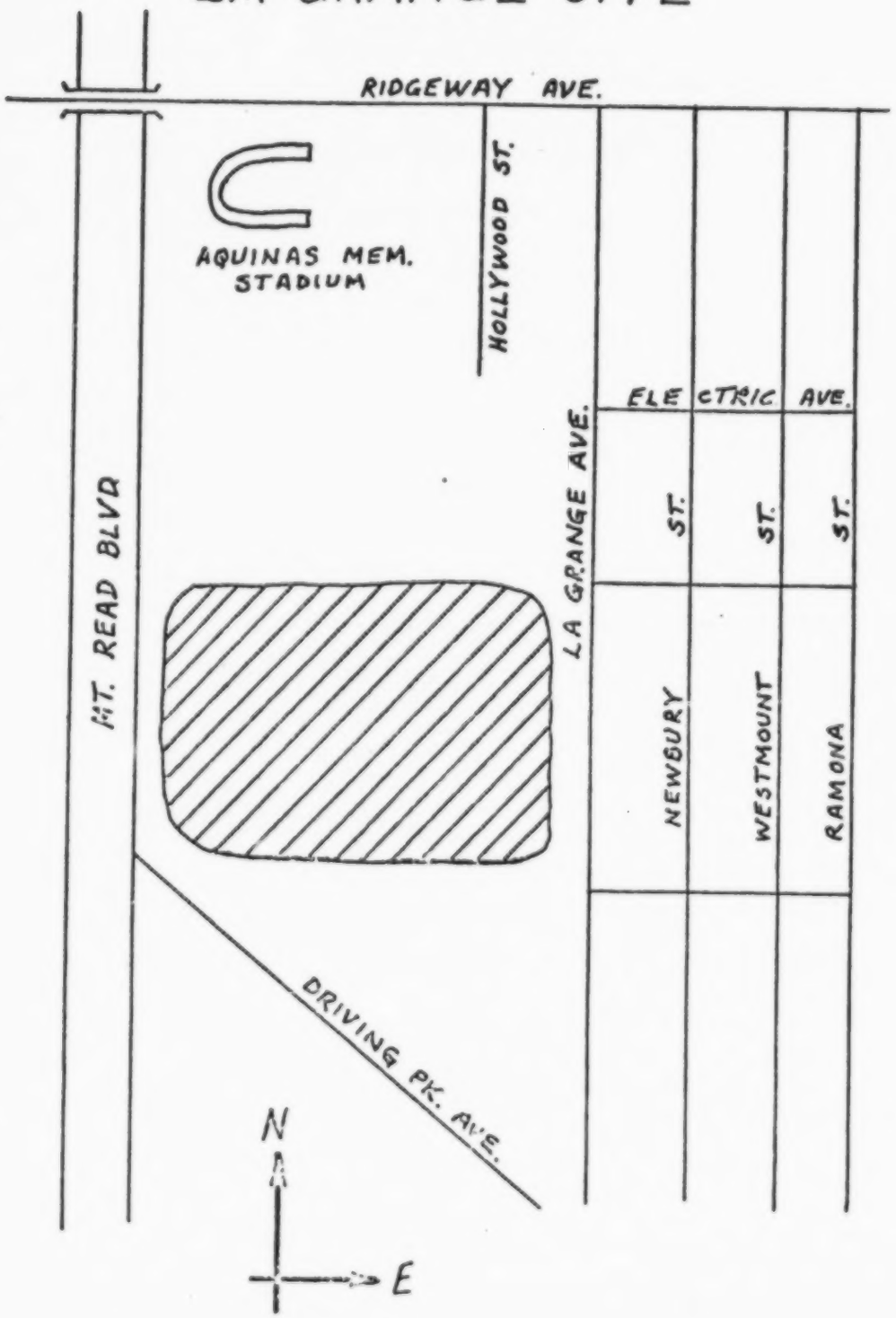


EXHIBIT B

SITE # 6 LAGRANGE AVE.

Approximately 15 acres between LaGrange Ave. and Mt. Read Blvd., near Aquinas Stadium and playing fields. The site is wooded and many of the trees could be saved to make a beautifully landscaped area.

Suitable for 200-300 units at moderate density.

Schools:

School #40, on LaGrange Ave. is very close; (K-6); had an enrollment of 503 as of 10/6/67; 3.2% non-white. (Advocates of "integration in schools through integration in housing" should be delighted.)
Schools #34 and #7 (new) are next nearest.
Upper grades are served by John Marshall High School.

Transportation:

Near major roads and proposed Greece Expressway.
Bus service is available on Ridgeway Ave.

EXHIBIT B

Shopping:

Adequate shopping facilities are located on Dewey Ave. at Flower City Park (less than one mile) and at Driving Park Ave. (just over one mile).

Recreation:

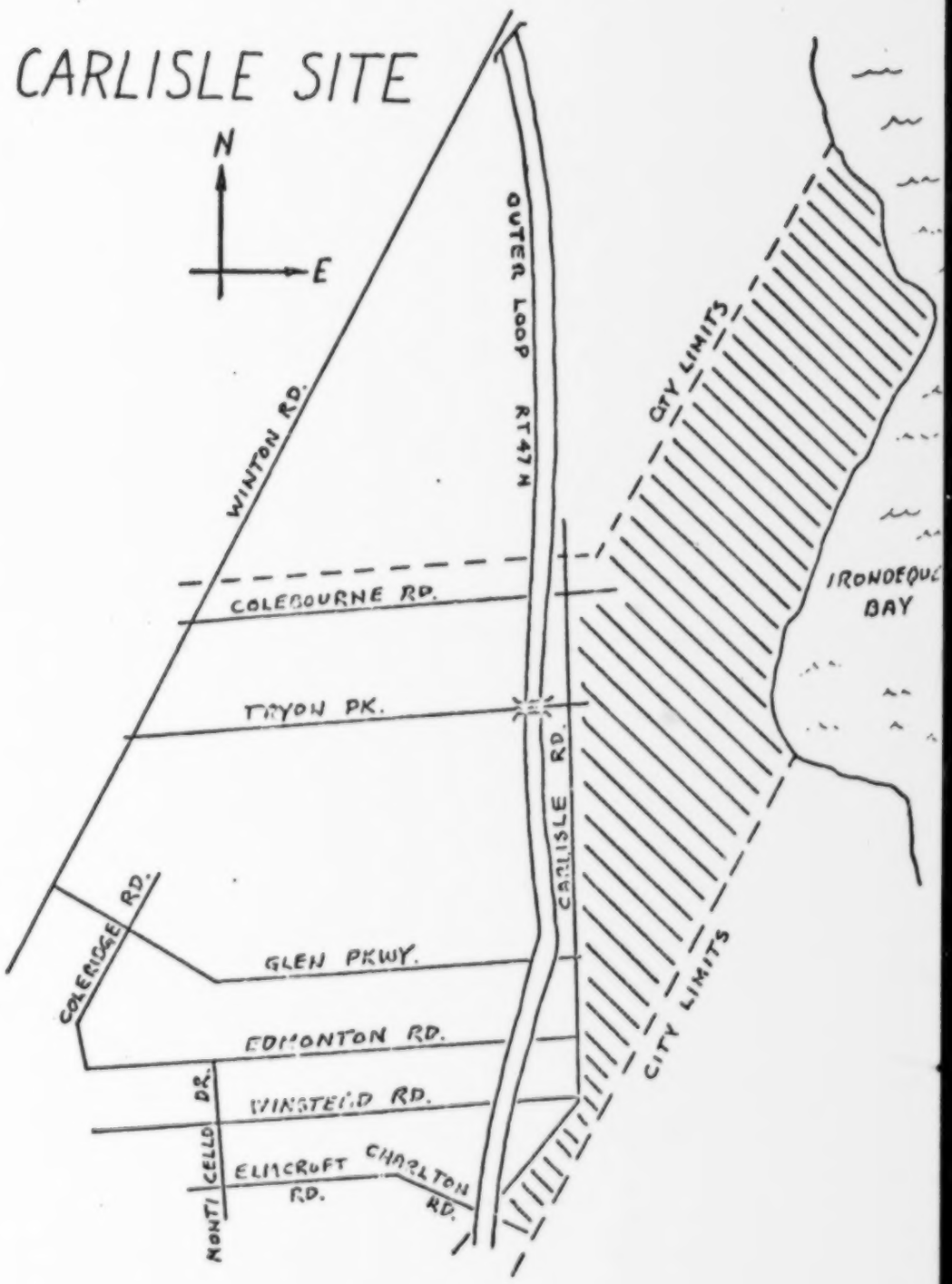
Adjacent to Aquinas playing fields and near School #40 recreation area.

Zoning and Proposed Land Use:

Presently zoned Industrial; the Comprehensive Master Plan proposes development for industry.

Sewage Facilities:

Sewer lines are available along LaGrange Ave.



SITE #8 CARLISLE RD.

This total area is over 50 acres, and much of it could be used for housing. Adjacent to the Sea Breeze Expressway and Carlisle Road, and bounded on three sides by city limits or Irondequoit Bay, the site would offer an excellent opportunity to combine housing with park facilities.

Suitable for 400-500 units at moderate density.

Schools:

School #52 on Farmington Rd. is close; (K-7); had an enrollment of 564 as of 10/6/67; 1.5% non-white. (Like School #40 a highly segregated white school in which housing could produce better racial balance.)
Schools #46 or #28 (scheduled for replacement) are next nearest.
Upper grades are served by East High School.

EXHIBIT B

Transportation:

Near bus lines on Browncroft and Winton Rd.
Near Browncroft exit of Sea Breeze Expressway.

Shopping:

Adequate shopping facilities are located on Winton Rd. at Browncroft, less than one mile from the site.

Recreation:

Adjacent to proposed development of Tryon Park (see Comprehensive Master Plan p. 113); the site affords an excellent opportunity to develop housing and park facilities at the same time.

Zoning and Proposed Land Use:

Presently zoned R-1; the Comprehensive Master Plan proposes development as park land, but shows proposed use of only ten acres by 1980.

Sewage Facilities:

A sanitary sewer pumping station is nearby.

EXHIBIT B

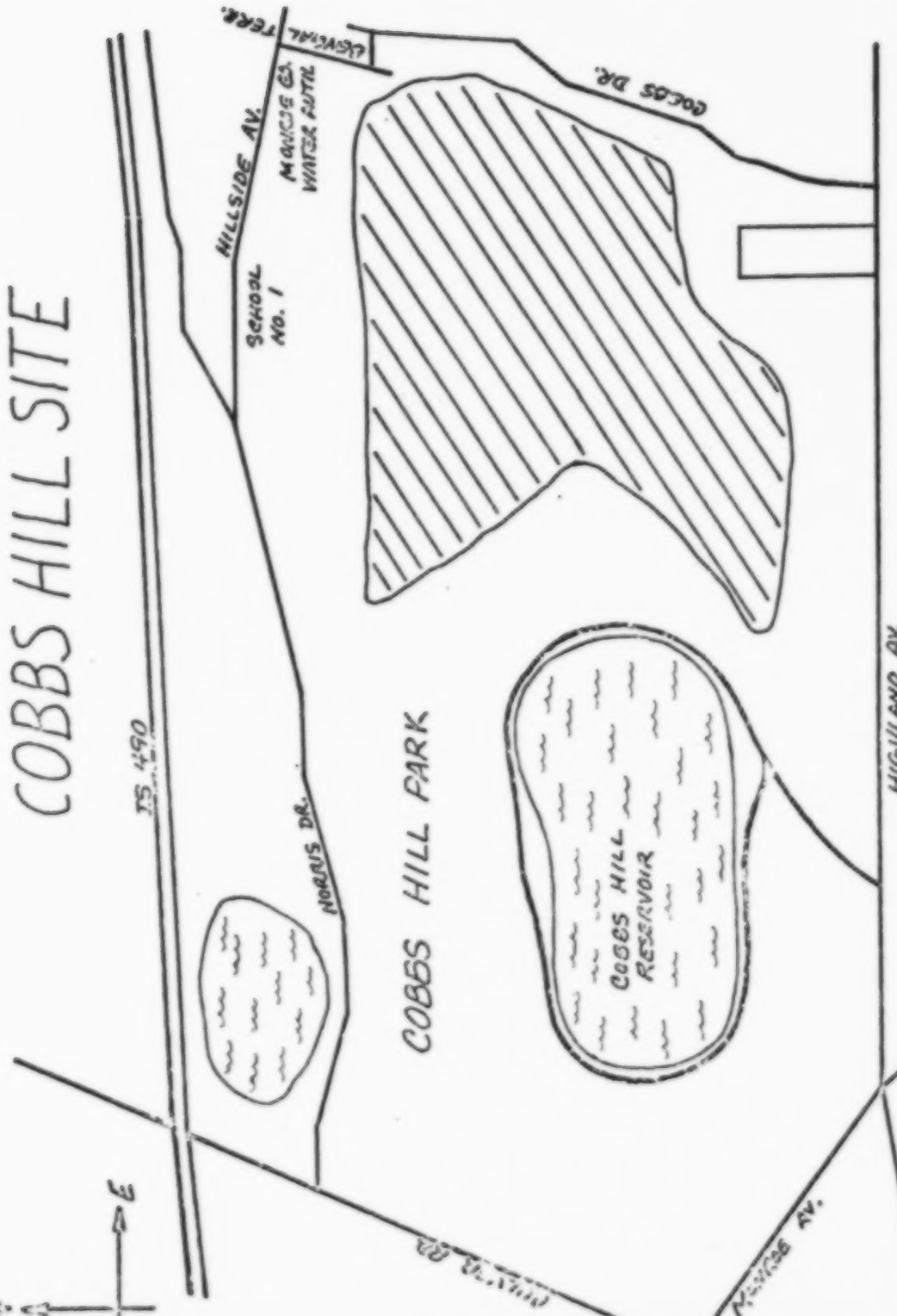


EXHIBIT B

SITE # 10 COBBS HILL

Approximately 30 acres, this site is close to Cobbs Hill Park, and east of the reservoir. The area is wooded and with proper planning could be attractively landscaped.

Suitable for 400 units at moderate density.

Schools:

School #1 on Hillside is near the site; (K-7); had an enrollment of 451 as of 10/6/67; 21.4% non-white due to 96 open enrollment students.
Schools #25 or #28 (scheduled for replacement) are next nearest.
Upper grades are served by Monroe High School.

Transportation:

Near major bus lines and major roads.

Shopping:

Adequate shopping facilities are located on East Ave. at Winton Rd., less than one mile from the site.

EXHIBIT B

Recreation:

Adjacent to Cobbs Hill Park and near School #1 playground.

Zoning and Proposed Land Use:

Presently zoned R-1; the Comprehensive Master Plan proposes development as park land, but shows no planned development up to 1980.

Sewage Facilities:

Sewers are available on Highland Ave.

Exhibit C
Attachment #4

City of Rochester, New York

Office of the City Manager

July 5, 1968

TO THE COUNCIL:

Subject: Friends of FIGHT, Inc., Housing Proposals

Gentlemen:

Friends of FIGHT, Inc., has submitted proposals for housing to the members of the Council and the City Administration. The proposals have had preliminary review by City staff and the Executive Director of the Rochester Housing Authority.

We are interested in the proposals of any groups of responsible citizens concerned with the problems of housing in our community. We have worked closely with a number of such organizations, including the Catholic Interracial Council, the incorporators of the RUSH Corporation, the Council of Churches and others. Many of them, including FIGHT.itself, have submitted specific development plans for consideration by and assistance from the City government. We have cooperated and we will continue to do so.

EXHIBIT C

It must be clearly understood that it is the responsibility of the Rochester Housing Authority, not the Council, to recommend sites for the location of low-rent public housing. The Housing Authority, however, has already used up its reservation of funds for 1,000 units of low-rent public housing, and it has more than 500 units in the pipe-line awaiting an additional reservation of funds from the Federal government. The Authority is working on an application which, if approved, will reserve funds for a total of 2,000 or more units. Undoubtedly the Authority will want to review in detail the proposals of Friends of FIGHT,just as it examines proposals of other groups which have presented their proposals to the Authority, when Federal approvals are obtained.

The task of the Authority, at this point in time, is not to ascertain the validity of the four specific sites urged for low-rent public housing by Friends of FIGHT. It is, rather, to complete its commitment of 1,000 units and to get a new reservation for 2,000 more. When that reservation is in hand, I am confident the Authority will move quickly to review the four sites and the others proposed by other groups, corporations and individuals.

The Authority, especially since the present Executive Director assumed his position, has moved as rapidly as legal, economic and other restrictions permitted to provide housing. The status of the Authority's

EXHIBIT C

program, reported to me by Mr. Robert Sipprell, the Executive Director, is as follows:

In management and occupancy

Kennedy town houses	35 units	
Hanover Houses	392	
Kennedy Tower	97	
Danforth Tower	100	
Single-family houses	24	
Two-family houses	32	
Four family houses	4	
	884	884 units

Under construction

Duplex houses	28	
Fairfield Village	36	
Atlantic Apartments	24	
Bay Street town houses	40	
	128	128

New construction approved with funds allocated

Town houses, Bond and Hamilton Streets	10	
Danforth Tower East	100	
Town houses, Edinburgh Street	3	
Duplex houses	6	
Town Houses, Hudson Avenue	72	
	191	191

EXHIBIT C

Purchases approved with funds allocated

Elmdorf Apartments	20	
West Park Apartments	57	
Parliament Arms Apartments	52	
Parkside Apartments	22	
Single-family houses	32	
	183	183

Development program submitted

Single-family houses	100	100

In negotiation

Apartment project	90	
Duplex houses	14	
Single-family and town houses	80	
	184	184

Reserved for Third Ward scattered sites

	54	54
Total		1,524

The total exceeds the Authority's present allocation. The Authority, in addition to those listed above, has approximately 100 units under lease from private or non-profit owners, with 100 or more to be taken under lease by October of this year.

The Authority also has received proposals from builders, developers or both for more than 100 units of new construction on vacant scattered sites, plus proposals for

purchase of existing apartments totaling more than 200 units in various locations, all of which cannot be acted upon until a new program reservation is obtained from the Federal government. All such proposals are for locations outside the central core of the City.

The Council must consider certain standards in its evaluation of sites recommended by the Authority, criteria which I am sure the Authority also employs. These may be described as follows:

1. What is the effect of the housing proposed on the sites on the total development plan of the City? Despite the priority which low- and moderate-rent housing has in our planning, the City has to be concerned as well with its general objective of well-balanced development in this City. This means that there must be commercial, industrial and residential development; provision for the recreational and cultural growth that make a City attractive to all income groups, not just the poor.

2. What is the effect of the large concentrations of low-rent housing proposed by Friends of FIGHT, Inc., on the prospective occupants of such housing and the larger neighborhoods in which they would be located? Clusters of up to 400

low-rent housing units in any location in the City have too many undesirable effects. Our objective continues to be small numbers of units on any one site.

3. Can low-cost housing be built on a site within the severe cost limitations that govern the Federally-assisted program of the Rochester Housing Authority ? If topography, sewer and water and other costs are unmanageable, the site suggested, whatever its other features, must be discarded.

A preliminary examination of the Friends of FIGHT proposals discloses that they would take land in one of the few remaining natural recreation areas of the City, Cobbs Hill, and assign it to housing use. Another site would involve the taking of scarce industrially-zoned land. Still another would remove land selected for future recreational development and is further limited by severe grade problems that would make low-cost housing development prohibitively expensive.

While it is premature, because of the absence of a new Federal reservation of funds, to burden the Authority with the results of detailed reports based on analysis by City engineering, planning and other staff personnel, I am prepared to direct that such studies be undertaken and presented to the Authority when the Authority wants the in-

formation.

In the meantime, it seems to me that the Friends of FIGHT could be of great assistance to its companion organization, FIGHT, which is planning to develop the old General Hospital site on Main Street West for public housing. It could provide, also, through the large percentage of its membership that lives outside the City, the impetus for the construction of low-and moderate-rent housing in the Towns of Monroe County. Their efforts, addressed to their representatives on their Town Boards, might help ease the problems of a City which thus far has made the only effort in this metropolitan area to meet community housing needs, which provides tax exemption for a quantity of public and moderate-rent housing projects and which continues to underwrite, through tax exemptions, the facilities and services supplied by community-based agencies to our low-and middle-income population.

Respectfully,

/s/ S. Scher

Seymour Scher
City Manager

SS:j

TO THE COUNCIL: August 23, 1968

Re: The City Manager's Report on Friends of FIGHT Housing Proposal.

Dear Councilman:

The City Manager saw fit to devote only one paragraph of his three and one quarter page report to the sites involved in the Friends of FIGHT proposal. Not wishing to commit the same kind of oversight, we will comment on his report as it was set forth. We believe that the issue of adequate housing for Rochester citizens is important enough to deserve more than an apology for the status quo.

First, the City Manager indicates that "it is the responsibility of the Rochester Housing Authority, not the Council, to recommend sites for the location of low rent housing." The Council has not been asked to recommend -- Friends of FIGHT has recommended the sites. The City Council has been asked to designate the sites, as they must even if the Housing Authority recommends. The implication is that City Council cannot or should not listen to recommendations from citizens' groups, but only from city staff. This raises the whole question of who makes decisions: the people of Rochester and their elected representatives, or those employed in

various staff positions. If thousands of concerned citizens had been satisfied with the record of the Housing Authority and the City Administration, the Friends of FIGHT proposal would not have been necessary.

Second, the City Manager suggests that because the current federal reservation of funds is expended, no consideration can be given to additional potential sites. If this procedure is followed, valuable time will be lost -- not only now, but each time a new application must be processed. It would seem, especially since designation is a preliminary step which costs no money, that a far more expeditious approach would be to anticipate funding with land designated, plans in the works, etc. so that construction could begin immediately. In addition, since leasing funds are available, it is at least feasible to consider private development with leasing agreements; the Friends of FIGHT proposal nowhere said that the Housing Authority must build and develop apartments on these sites.

The listing of present and processed units of low and moderate income housing is totally irrelevant to the issue. Whatever housing exists or is projected bears little relation to the question of additional development, since the present crisis cannot be solved -- or even significantly affected -- by the 840 units in various stages of planning. The Metropolitan Housing Committee indicates in its brochure released in July that

1,000 additional units each year enter the sub-standard category. Obviously, unless more than 1,000 units are constructed in the same time period, we fall further and further behind. To point out that more is being done than during previous years is futile, unless that "more" is enough. Since it is not, the "record" only serves to strengthen the Friends of FIGHT contention that vacant, city-owned land must be designated for housing.

The City Manager raises the question of the "effect" of proposed housing -- as it relates to the total development plan of the city, and with respect to "large concentrations of low-rent housing". At the same time, he acknowledges "the priority which low and moderate-rent housing has in our planning." Assuming that this priority is real, the implication that the Friends of FIGHT proposal threatens "balanced development" is difficult to understand. If the construction of less than 1,500 units on widely scattered sites will upset balanced development, how will the problem ever be solved? How, for that matter, will the new reservation of 2,000 units be used without also upsetting the balance? If the most suitable vacant land in the city cannot be used for housing because of the total development plan, the alternative must be to build new housing on land presently occupied either by housing or business. If it is occupied by housing, the inventory will not substantially

increase; if by business, the "balance" will again be upset. If multiple-unit construction is the only feasible way to provide significant numbers of units of low and moderate income housing for families, and if the "total development plan" does not provide for sufficient multiple-unit areas to make this possible, then the conclusion must be that the plan needs revision. A time of crisis requires reconsideration of plans drawn years ago when no crisis was recognized.

The question of "large concentrations" of low income housing is enigmatic. In the first place, the definition of "large" is obscure. "Clusters of up to 400 low-rent housing units in any location in the City have too many undesirable effects." If so, one must ask at what point the alleged undesirable effects diminish. In other words, what number of units is small enough -- without at the same time being so small as to have no effect on the problem. We have already noted the rapid decline in the inventory of standard housing. This affects low and moderate income families first, but it also affects the tax base, neighborhood businesses, the well-being of neighborhoods, and the city as a whole, as well as the "general objective of well-balanced development."

In addition, the objection to proposed "large concentrations" makes no acknowledgment of the effect of present large concentrations of low income families in sub-standard housing in present ghettos.

It is plain even to the casual observer -- and certainly to the serious investigator -- that the concentration of all of a city's low income families into a few neighborhoods with a high incidence of sub-standard housing, has undesirable effects. To transfer conclusions drawn from the present condition of thousands of families to proposals involving a few hundred families in well-planned, carefully designed, adequately maintained homes is hardly logical. The experience of numerous other cities indicates that with proper planning and good management practices the repetition of the Hanover mistake is not necessary or inevitable. The question is whether a policy based upon negative conjecture will continue to condemn families to sub-human living conditions.

The question of cost limitations is raised, but obviously does not bear significantly upon these sites because, if it did, further discussion would be precluded. Our technical consultants assure us that under either turnkey or leasing agreements, cost factors are not prohibitive. The one site about which cost reference is made is so large that the grade problems can be ignored. In short, while cost must always be considered, there is no reason to rule out any of these sites on that ground alone.

Since you have before you the original case presented for the four parcels of land in question, we will not belabor those points here. It should be noted that the

EXHIBIT C.

City Manager's cursory comments raise relatively minor objections. Regarding proposed recreational development, both at Cobbs Hill and Irondequoit Bay, priorities must be considered, and the less-than-maximum usage of present parks challenges the wisdom of a decision which places the future recreational development of vacant land above the immediate need for housing. Nevertheless, recognizing the need for both housing and recreational space, we submit that the two are not mutually exclusive, and that imaginative site development could combine housing and recreational facilities in a mutually beneficial way.

Another site is faulted for proposed rezoning of "scarce industrially-zoned land." Since 13 of the 20 zoning changes approved by the planning commission during the past year were from Residential to Business or Industrial zoning designations, it is apparent that "scarce" industrial land is created out of residential land with relative ease. The vacant land on LaGrange is, and has been, zoned Industrial, and yet there has been no proposal for its sale and development. It is, in addition, bordered on one side by recreational land, and on another by residential; thus arguing at least as reasonably for extension of the residential zone as for bringing industry closer to existing residential and recreational acreage. Since the City Manager does not mention the site bordering Charlotte High School at all, we assume he has no "preliminary" objection to raise.

EXHIBIT C

All four sites commend themselves for serious consideration, both on the basis of preliminary and more detailed investigation. They are vacant, they are owned by the city, they will not go away; neither will the housing crisis, nor the concerned citizens who want to see a change in the slow pace of progress. Much valuable time has been lost since our proposal was presented in early May. We urge prompt action on the sites, and welcome discussion with you or members of the city administration regarding details of the proposal.

Sincerely yours,

/s/ Laurence J.Kirwan

Laurence J.Kirwan, President
Friends of FIGHT, Inc.

LJK:klm

EXHIBIT D

DHC 5-9-68

City Land Urged for Housing

ATTACHMENT #2

Friends of FIGHT wants the city to use four parcels totaling 230 acres of city-owned vacant land for low-income housing.

Laurence J. Kirwin, Friends of FIGHT president, and Henry Botts, the organization's housing committee chairman, offered this proposal to Mayor Frank T. Lamb yesterday.

They hope an estimated 1,400 to 1,500 units could be built on the four parcels selected as the most feasible for housing of the many city-owned parcels studied in recent months by the group.

The sites proposed are:

—A 25-acre parcel near Charlotte High School playing fields, bordered on the north by Ontario State Parkway, the city line on the west, and a point north of Dewise Road on the south.

—About 15 acres LeGrange Avenue and Mt. Read Boulevard near Aquinas Stadium.

—More than 50 acres between Sea Breeze Expressway and Irondequoit Bay in a finger of city land pointing northeast toward the bay.

—About 30 acres close to Cobbs Hill Park in a wooded section between the reservior and Cobbs Hill Drive.

Using the services of an architect and an engineer, the organization surveyed vacant city-owned land last fall.

The four selected sites, Botts said, are suitable for buildings.

They are vacant, he added. They are already owned by the city.

Botts said the sites, all in outer-city areas, are in line with the scattered-site concept of low-income housing.

The group asked the city to rezone the properties, designate them for low-income housing, and [illegible] red tape [illegible] approach development.

Friends of FIGHT [illegible] called on the city to make four parcels of city-owned land available for housing.

An estimated 1,400 housing units could be built on the land, which is vacant and suitable for housing development, according to Friends of FIGHT president Laurence J. Kirwin and housing committee chairman Henry Botts.

Kirwin, Botts and three Friends of FIGHT members who live in the city called on Mayor Frank T. Lamb today to present their proposal. The members are the Rev. Robert Booher, Robert Wolfe and Daniel Arensmeier. Friends of FIGHT did not propose today to build the housing.

Friends of FIGHT surveyed vacant city-ownad land last fall in response to arguments that there was little land available for low and middle-income housing in the city.

The four sites they recommend are the ones most feasible for the development of housing, Friends of FIGHT said.

The sites are these:

A 25-acre parcel close to Charlotte High School playing fields running from Ontario State Parkway on then north, along the city line on the west almost to Denise Road on the south, suitable for up to 400 housing units, Friends of FIGHT said.

About 15 acres between LeGrange Avenue and Mt. Read Boulevard near Aquinas stadium. Driving Park Avenue is to the south; suitable for 250 to 300 units.

Over 50 acres, much of it available for housing between Sea Breeze Expressway and a part of Irondequoit Bay in a finger of city-owned land pointing northeast toward the bay. Between 400 and 500 housing units could be built, Friends of FIGHT said.

About 30 acres close to Cobbs Hill Park in a wooded section between Cobs Hill Reservoir and Cobs Hill Drive, suitable for about 600 units.

The city was asked specifically to designate these sites for low-income family housing; enact the required zoning changes and give aggressive and creative leadership to help overcome the red tape that holds up housing development.

Friends of FIGHT is a white organization that seeks to mobilize support in the white community for the black organization FIGHT. Friends of FIGHT is now at work on its own agenda for [illegible] the white [illegible]

BEST COPY AVAILABLE

EXHIBIT E

METRO-ACT OF ROCHESTER, INC.

PROPOSAL REGARDING LOW-INCOME HOUSING

FEBRUARY 1969

EXHIBIT E

I. Introduction

II. Section 23

III. The Need

IV. Advantages

V. Steps Required by H.U.D.

VI. The Local Situation

ENCLOSURES

Circular about Section 23, H. U. D. IP-3, March 1967

Interest Subsidy per Tenant

Fact Sheet -- Available Housing in Key Towns

EXHIBIT E

I. INTRODUCTION

There is no magic solution to metropolitan Rochester's housing crisis. A change for the better will only come from diverse approaches to the problem.

In the suburbs we need single houses, multiple dwellings, homes to own, homes to rent, healthful living space for all ages, all incomes, all families; homes that make it possible for people to live where they work, homes that let low-income elderly people continue to stay where they have lived all their lives. We also need housing that permits low-income families to move from the city to the suburbs.

The following presentation describes briefly one step a qualified government unit can take to alleviate the suburban shortage of rental units for low-income persons and families.

Because the crisis in housing effects the whole Metropolitan area, Metro-Act of Rochester, Inc. joins with its affiliated groups in the towns in preparing and presenting this proposal in the hope that decisive action will result.

II. DO YOU KNOW...?

There exists a United States Housing Act of 1937, amended in 1965...?

EXHIBIT E

And under Section 23 of this Act, money is available for the housing of low-income families....?

And that this money is for use in a rent subsidy leasing program of low-income housing....?

And that no Housing Authority is required to implement the program....?

III. THE NEED

1. Low-income elderly people now often must move from areas where they have lived all their lives to find housing compatible with their income.

2. Low-income workers badly needed in the suburbs cannot afford to live where they work.

3. Almost all housing built today either for rental or sale is out of the range of low-income families.

4. Civic improvements in the city enjoyed by all residents of the county continue to eliminate low-income housing.

5. There is an immediate need for 15,000 to 30,000 housing units in the county.

6. In the last six years, an additional 2,000 jobs per year have been added to the employment rolls here, with many

EXHIBIT E

of these potential employees in the low or low-moderate income brackets. How can we expect to fill these positions, if no housing is available in this area for these people and their families?

IV. ADVANTAGES OF SECTION 23

1. No housing authority is required.

2. Any responsible governmental agency can act as administrator.

3. With open housing, we could have a town which is a better balanced community.

4. It gives the town home rule over the program.

5. The program is prohibited by law from causing inflationary effects on the private rental market.

6. There would be no reduction in property values.

7. No tax abatement or additional taxes would be necessary.

8. No zoning variances would be called for.

9. There are no enactment costs to the governmental agency.

10. Tenant selection is with the approval of the owner.

11. Agreement of the owner to participate is by his choice.

12. The governmental agency (alone) has the right to evict.

13. There would be, through guaranteed rent, incentive for the owner to upgrade property to qualify for the plan.

14. In any large structure the subsidized units can not exceed 10% of the total.

15. Only vacant units can be applied to the plan; no eviction procedure can be used.

16. Larger homes, which might have been sub-divided, would, as single units, have a much broader market for tenants.

17. The governmental agency can take credit for this plan, and reduce the chance of a higher authority taking over.

V. STEPS REQUIRED BY H.U.D.

1. A survey of the local rental market is taken to determine if local properties qualify.

2. The local governing body must approve the plan by resolution.

3. Application is made to H.U.D.

4. Landlords are approached and asked if they would enter into such an agreement.

5. Finding Tenants

   a. Eligibility is determined by governmental agency.

   b. Tenant can be chosen by owner with governmental agency approval.

   c. Tenant can be chosen by owner from a list supplied by the governmental agency.

   d. Selection may be by governmental agency if the owner prefers.

6. Administrative cost is borne by the government money available. (Approximately $10 per month per unit.)

EXHIBIT E

FACT SHEET

SUBSIDIZED RENTAL TO LOW-INCOME FAMILIES
under
Section 23, 1937 Housing Act

The cost of new construction is virtually prohibitive where low-income families are concerned.

For this reason, housing authorities (such as RHA) have come to rely heavily on leasing programs -- thus providing for low-income families a rent subsidy; the provision for such leasing is found in the 1937 Housing Act under Section 23.

Under the leasing arrangement, either non-profit or commercial properties may be leased.

Both the cost of construction and the absence of housing authorities have prevented any development of low income housing in suburban towns.

A Housing Authority for the county is being proposed, But: Even if all stages move smoothly it will take four years to establish that authority.

And, even if it is established, construction costs will prevent development of sizeable numbers of low-income units.

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However, it now appears that a housing authority is not necessary, because the Sec.23 leasing program can be administered by any governmental agency. (According to a recent legal opinion from the chief counsel of the Housing Assistance Administration.) The Town of Sodus has already embarked on such a program -- without establishing a housing authority.

This means that any or all of the suburban towns around Rochester, OR the County of Monroe, could apply for Federal Funds under Sec.23 and using those funds lease existing housing units for subsidized rental to low income families.

Under the leasing program, the owner receives his normal rent -- guaranteed for the duration of the lease -- with a portion (20% of monthly income) from the tenant, and the balance from the leasing agency. No owner can be "forced" to lease; any owner may.

Rent structures vary depending on family income and size, and there are ceilings on income which determine eligibility. Subsidy limits are set according to income level and family size.

EXHIBIT E

FACT SHEET
AVAILABLE HOUSING IN KEY TOWNS

	Population		Housing			
	Pop. 1960	Est. Pop. 1968,	Total 1960	Rental 1960	Est. Total 1968	Est. Rental 1968
BRIGHTON	27,849	33,550	8,474	831	10,913	3,111
CHILI	11,237	17,714	3,050	288	4,734	420
GATES	13,755	23,406	3,879	158	6,708	910
GREECE	48,670	72,976	13,840	976	21,719	3,942
HENRIETTA	11,598	26,956	3,116	313	7,137	1,787
IRONDEQUOIT	55,337	66,100	16,194	1,294	19,813	2,890
PENFIELD	12,601	22,430	3,732	690	6,375	1,430
PERINTON	16,314	27,771	5,[illegible]02	1,128	8,051	1,194

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FACT SHEET
AVAILABLE HOUSING IN KEY TOWNS

	Pop. 1960	Est. Pop. 1968	Total 1960	Rental 1960	Est. Total 1968	Est. Rental 1968
PITTSFORD	15,156	24,236	4,436	815	6,772	1,073
WEBSTER	16,434	23,263	4,743	571	6,642	1,080
VILLAGES						
E.ROCHESTER	8,152	8,576	2,495	752	2.668	826
FAIRPORT	5,507	6,092	1,747	547	2,031	557
PITTSFORD VILLAGE	1,749	1,823	621	NA	675	NA*
WEBSTER	3,060	4,411	941	NA	1,495	+509 from 1960

*No apt.constr. 1960-67

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FACT SHEET
AVAILABLE HOUSING IN KEY TOWNS

	Pop. 1960	est. Pop 1968	Total 1960	Rental 1960	Est. Total 1968	Est. Rental 1968
CITY	310,611	292,000	107,295	52,819	108,824	54,246**
BALANCE OF COUNTY ..	267,776	392,461	78,181	9,327	113,970	20,455
TOTAL COUNTY	586,387	684,461	185,476	62,146	222,794	74,701***

**Based on ratio mult.permits to toal constr.....unreliable est.
***Unreliable est. due to city data

EXHIBIT F

HOUSING

In Monroe County, N.Y.

SUMMARY REPORT

A Study for the

METROPOLITAN HOUSING COMMITTEE

Rochester Center for Governmental and Community Research

EXHIBIT F

METROPOLITAN HOUSING COMMITTEE MEMBERS

Mr. Joseph C. Wilson, Chairman

Mrs. DeLeslie L. Allen
Mr. Laplois Ashford
Bishop George W. Barrett
Mr. Harry D. Bray
Rabbi Herbert Bronstein
Mr. Abraham Chatman

Mr. Jorge Colon
Mr. John A. Dale
Dr. Louis K. Eilers
Mr. Maurice R. Forman
Mr. Thomas H. Hawks
Dr. William J. Knox
Mr. Philip M. Liebschutz

Mr. William D. Long
Mr. Joseph F. McCue
Mr. Paul Miller
Mr. John J. Petrossi
Bishop Fulton J. Sheen
Mr. James P. Wilmot

ABOUT THE COMMITTEE

The Metropolitan Housing Committee was jointly appointed by the City and County Managers under authorization from the Rochester City Council and the Monroe County Board of Supervisors. The authorizing resolutions state the need for an effective metropolitan housing policy. "...if such policy is to be effective...," the resolutions continue, a citizens' housing committee is required in order to

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evaluate metropolitan housing needs and solutions and to make recommendations "for the formulation" of metropolitan housing policy.

The Committee was specifically charged with inquiry into the following:

(1) ". . . metropolitan Rochester's housing needs, 1967-1976;

(2) "the special housing problems of minority groups, the elderly and the handicapped;

(3) "proposed sites for new housing developments, 1967-1976;

(4) "the problems of financing, of taxation and of construction of required new housing particularly for those with low and moderate income."

Within this framework, the Committee initiated a comprehensive research program and a program of public education.

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HOUSING IN MONROE COUNTY, NEW YORK

Summary of Research Staff Findings and Recommendations

PREPARED FOR THE METROPOLITAN HOUSING COMMITTEE

Joseph C. Wilson, Chairman

By:

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ROCHESTER CENTER FOR GOVERNMENTAL AND COMMUNITY RESEARCH, INC.
(Formerly the Rochester Bureau of Municipal Research, Inc.)

Craig M. Smith, Director

April, 1970

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FOREWORD

The selected findings and recommendations summarized here are taken primarily from five housing study memoranda (together entitled Housing In Monroe County, New York) prepared for the Metropolitan Housing Committee by the staff of the Rochester Center for Governmental and Community Research, Inc. (formerly the Rochester Bureau of Municipal Research, Inc.). The Metropolitan Housing Committee was jointly appointed by the City and County Managers in 1967 for the purpose of exploring metropolitan Rochester's housing needs, 1967-1976. In particular, the Committee was charged to inquire "into the special housing problems of minority groups, the elderly and the handicapped; into pro-

posed sites for new housing developments ...; and into problems of financing, of taxation and of construction of required new housing particularly for those of low and moderate income."

In carrying out its charge, the Committee employed the Rochester Center for Governmental and Community Research as its research arm. During a period starting in early 1968 and extending through June, 1969, the Research Center staff prepared the following five reports for Committee study:

An Overview - Philosophy, Goals, Activities and Sources

Community Organization of the Housing Effort

Metropolitan Housing Review: Current Housing Market Structure

Patterns of Growth: Selected Aspects of Community Development in the Rochester Metropolitan Area

Summary of Proposed Recommendations for Metropolitan Housing Committee Support or Action

These reports are available at local public libraries and the Research Center.

These and other research efforts for the Commitee were financed jointly by the City of Rochester and Monroe County and through the generosity of Joseph C. Wilson (Metropolitan Housing Committee Chairman) and the Xerox Corporation.

Housing in Monroe County contains contributions from many parts of the Monroe County Community. The Research Center wishes to express its appreciation to the public agencies, civil servants, private corporations and individuals whose cooperation made this housing study possible.

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The contributions made by the staff of the Monroe County Planning Council to this study deserve special mention. Their counsel and efforts permitted the development of a working draft of a planned unit development article for town zoning ordinance and the development, with assistance of County Data Processing, of an analysis of vacant land for potential housing sites.

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SUMMARY OF RESEARCH STAFF FINDINGS

(Summary of selected findings primarily from Housing in Monroe County, New York a series of five study memoranda prepared for the Metropolitan Housing Committee by the Rochester Center for Governmental and Community Research, Inc., January, 1968 - June 1969).

Housing Needs

(1) HOUSING NEEDS IN MONROE COUNTY, 1969-1975: The housing needs of Monroe County arise from several sources:

(a) housing units needed to accommodate a growing population;

(b) units needed to increase available vacant housing units--without which housing choice and market flexibility will remain diminished;

(c) units needed to relieve overcrowding in housing;

(d) units needed to replace sub-standard or inadequate housing--including replacement of accumulated substandard housing and continuing replacement of housing because of aging, demolition, fire, etc.

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The following table shows the additional housing units required in order to provide every individual and family in Monroe County with decent, standard housing by 1975. While it is not likely that this number of units will in fact be constructed by 1975, this table does reflect the vast magnitude of Monroe County's housing needs and possible housing goals for the community. The table does not reflect, however, the additional units which may generally be sound but which need substantial rehabilitation to make them conform to accepted standards. Approximately 12,000 such units exist besides those slated for replacement.

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Table A

ADDITIONAL HOUSING NEEDS, MONROE COUNTY
1969-1975

Current Needs	
Replacement of inadequate housing	9,700
Provision for adequate vacancies	2,700
Relief of overcrowding	1,000
Subtotal	13,400
Future Needs (1969-1975)	
Projected household growth	47,400
Provision for adequate vacancies	1,200
Accumulating replacement	7,600
Subtotal	56,200
Overall Total	69,600

(2) DEFINITION OF LOW AND MODERATE INCOME and LOW AND MODERATE INCOME HOUSING NEEDS IN MONROE COUNTY, 1969-1975:

Any designation of an income as low or moderate obviously depends on the specific demands placed on that income by an individual or family. However, while not always applicable to a specific

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situation, experience demonstrates that it is reasonable to define low and moderate household income ranges as in the following table which shows percentage distribution of Monroe County households by family size and income category.

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Table B

DISTRIBUTION OF HOUSEHOLDS BY FAMILY SIZE AND INCOME CATEGORY, MONROE COUNTY, 1968

	Households				
	1& 2 Person		3 or More Person		All
Low Income	Under $5,200	16.3%	Under $7,499	10.5%	26.8%
Moderate income	$5,200-7,499	6.6	$7,500-9,999	12.0	18.6
Middle Income	7,500-9,999	6.4	10,000-14,999	20.3	26.7
High Income	10,000 & over	13.0	15,000 & over	15.0	28.0
Totals		42.3%		57.8%	100.0%

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Low and moderate income families and individuals have, by far, the greatest problem in finding decent housing to meet their needs. Housing problems are particularly severe for the elderly and the young family. Within the county, the most serious (and numerous) instances of occupied substandard, unsafe housing and overcrowding of housing occur in the City of Rochester.

The table below shows the additional housing units required in order to provide decent housing for those now living in substandard or overcrowded units and for future low and moderate income households. As a comparison with the above Table A, Table C below reflects existing evidence that all CURRENT NEEDS are for low and moderate income housing. Of the FUTURE NEEDS, nearly 65 percent of the projected

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household growth and all vacancy and replacements will require low and moderate income housing.

Table C *

ADDITIONAL LOW AND MODERATE INCOME HOUSING NEEDS, MONROE COUNTY, 1969-1975

Current Needs	
Replacement of inadequate housing	9,700
Provision for adequate vacancies	2,700
Relief of overcrowding	1,000
Subtotal	13,400
Future Needs (1969-1975)	
Projected household growth	30,700
Provision for adequate vacancies	1,200
Accumulating replacement	7,600
Subtotal	38,500
Overall Total	51,900

*Table C differs from Table A in only one way: Table C excludes a projected 16,700 households needing middle and upper income housing during the 1969-1975 period.

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(3) AVERAGE ANNUAL PRODUCTION NEEDS FOR NEW LOW AND MODERATE INCOME HOUSING-- CITY AND TOWNS:

It is estimated that, in order to eliminate substandard housing by 1975 and to adequately house new low and moderate income households through 1975, the following average annual production schedule must be met:

	Low and Moderate Income Housing Units Average Annual Need, 1969-1975
City of Rochester	2,700 (new units)
Towns of Monroe County	4,700 (new units)
Total Monroe County	7,400 (new units)

The reader should keep in mind that these production figures represent only housing production goals. While production rates of these magnitudes must be achieved to provide all citizens with decent housing, the actual housing production rate for

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all (low, moderate, middle and upper income) housing has been running at only 5,400 units per year during the past decade. And, while peak years have run at nearly 7,000 units, this past year (1969) has actually run below the annual average for the 1960's decade.

(4) OVERCROWDING:

Housing inventory conditions seem to indicate the existence of at least as much overcrowding in 1968-69 as in 1960--even with more serious overcrowding for low income households in Rochester's central city. Approximately 10,000 housing units in Monroe County were overcrowded in 1960.

(5) HOUSING IN NEED OF REHABILITATION

Monroe County (including the City of Rochester) shows a need to rehabilitate

approximately 11,555 occupied housing units. At present, these units are either lacking facilities (such as hot water, flush toilet, bathtub or shower) or in a deteriorated condition (deteriorated units have defects that must be corrected if they are "to continue to provide safe and adequate shelter"). While in the City of Rochester some 3,200 buildings (most of which are residential units) are scheduled for rehabilitation, more than 5,500 occupied units are in need of varying degrees of rehabilitation and <u>are not</u> even being planned for at this time. If 1975 is considered as a target year for complete rehabilitation, there is an annual incremental need for the rehabilitation of 1,651 deficient units (including those already planned for rehabilitation). This figure <u>has not</u> been adjusted for

units which have fallen into this deficient category since 1960-- and thus it represents a conservative estimate.

(6) <u>WAITING LISTS:</u>

Housing applications and waiting lists for public and publicly assisted housing are a good indication of verified housing need. In early 1969, there were 4,379 applicants (both individuals and families) on the waiting lists of the Rochester Housing Authority (low income public housing) and Rochester Management (moderate income-publicly assisted housing). These applicants were applying for appxoximately 2,700-3,500 housing units. This range occurs because some units were (and are) still under construction. Nearly all completed units were fully occupied.

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Housing Inventory

(7) NEW HOUSING PRODUCTION:

From 1960 to 1968 the housing inventory of Monroe County increased by an estimated 48,241 housing units-- 36 percent of which were multiple dwelling units. The vast majority of these units were middle and high cost housing built largely in the first ring of towns surrounding Rochester. The county as a whole averaged approximately 5,376 housing units added each year over the last nine years. Of this number, the towns averaged 4,797 new units, while the city averaged only 579 new units. The units added to the towns were 30.5 percent multiple dwelling units and those added to the city were over 80 percent multiple dwellings. Almost five times as many multiple dwellings have been

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built in the towns since 1960 as were built there in all the years before 1960.

(8) PUBLIC AND PUBLICLY ASSISTED LOW AND MODERATE INCOME HOUSING IN MONROE COUNTY:

In the spring of 1969, there were approximately 2,815 publicly assisted moderate income housing units and 1,351 low income (public) housing units available or under construction -- a grand total of 4,166 units, all located in the City of Rochester. Of these, 1,255 units, or 30 per cent, were for elderly occupancy only.

Also in the spring of 1969, there were roughly 5,100 publicly assisted moderate income units and 2,200 public low income units in the pre-construction and planning stages. By late winter 1969, however, there were some 700 fewer units in the moderate income pre-construction and planning stage. Project proposals

have been falling through more quickly than new ones have developed.

(9) CONDITION OF HOUSING:

The Research Center defined deficient or substandard housing as: (1) physically sound but lacking some or all plumbing facilities; (2) physically deteriorating; (3) physically dilapidated. Given this definition, the deficient housing situation in 1960 can be summarized as follows:

DEFICIENT HOUSING UNITS IN MONROE COUNTY, 1960

	Total Deficient Units	Sound Lacking some or all Plumbing Facilities	Deteriorating	Dilapidated
County	27,036	6,046	17,157	3,833
City	20,540	4,755	13,104	2,681
Towns	6,496	1,291	4,053	1,152

Source: 1960 U.S.Census, PHC (1)-127

Approximately 23,000 of these deficient units were actually occupied. The City of Rochester is, by far, the houser of the majority of the ill-housed. Of the approximately 18,000 deficient occupied units in the city, nearly 4,000 were owner-occupied and over 14,000 were renter-occupied.

The Research Center estimated that the general condition of housing, especially in the city, has not improved significantly since 1960 -- and may have even declined. This estimate is conservative. A more realistic evaluation of condition of housing is the level of housing code violations. In the City of Rochester, housing code violations are believed to be at a level which indicates far more deficient, inadequate housing than is indicated by the Census data shown above. Unfortunately, good

statistical data on housing code violations is lacking.

Housing Costs

(10) GENERAL COMMENT ON HOUSING COSTS:

Less than one percent of all new single-family homes built in Monroe County since 1960 have been in the $15,000 or under category -- and over 70 percent have sold for more than $20,000. Significantly, in 1967 and 1968, the First Federal Annual Survey of New Construction showed no homes being built for under $15,000. Furthermore, in 1968, there was apparently a sharp decline in the number of housing units built in the $15,001-$20,000 category: 97 in 1968 versus 942 in 1967. Even in the "existing homes" market, there has been a decreasing number of units available for under $15,000 (758 in 1960 versus 407 in 1965). The average price of existing homes has increased from $15,763 in 1960 to more

than $21,000 in 1969. The cost to rent housing has shown similar increases.

(11) HOUSING PRODUCTION COSTS:

Housing production costs involve the following items: developed land, materials, on-site labor, overhead and profit, and other miscellaneous. Of these cost elements, many authorities agree that land has been the most rapidly rising over the past two decades. It is estimated that the average price per acre of raw land paid by builders rose from $1,222 in 1950 to $6,460 in 1970. FHA has reported that site value as a percent of total house value had increased from 12 per cent in 1950 to 20 percent in 1965.

The costs of both construction materials and on-site labor have been increasing - although not as rapidly as land. While labor costs are often blamed for the rapid rise in the cost of housing,

the facts seem to give far less significance to labor's part in forcing prices up. The President's Committee on Urban Housing has estimated that a 20 percent cut in building trade wages for on-site construction would secure only a 2 percent monthly savings in cost to the housing consumer.

(12) HOUSING OCCUPANCY COSTS:

Occupancy costs reflect production cost increases as well as debt retirement costs, site rent, taxes, utilities, maintenance and repair, administrative costs, vacancies, bad debts, and profit. (Site rent refers to mobile home cost element.) Debt retirement accounts for slightly more than 50 percent of total occupancy costs. Obviously, the terms of a loan are the most important factor in determining occupancy costs. The considerable increases in both interest

rates and taxes have had a great effect on the ability of households to afford a house. While the monthly income of a typical household has increased by about 41 percent, the monthly carrying costs (interest, principal and taxes only) for a home which cost $15,000 in 1960 had increased approximately 52 percent by 1968. The down payment had also increased $3,065 over the 1960 level. Combining only these factors, it becomes apparent that the moderate income household of 1968 was far less able to manage the purchase of a house in 1968 than a similar household in 1960.

(13) REDUCING HOUSING COSTS:

Housing costs should be seen as the results of a large variety of factors -- all of which require different approaches if spiralling dollar increases are to be curtailed. Increasing land costs must

be met with better designed land use control mechanisms and a more realistic taxing of land speculators. Labor costs must be brought down by increased efficiencies involving both new technology and reducing the seasonality of construction employment. The cost of mortgage money must be brought down through such practices as variable interest rates and increased availability (by requiring more money to be invested in local mortgage markets).

Housing of Minority Groups

(14) CONDITION OF MINORITY HOUSING:

More than 25 percent of all nonwhite households occupied overcrowded units in 1960. In comparison, the county as a whole had only 5.6 percent of its households living in overcrowded conditions. A disproportionate

number of nonwhites are also living in substandard units: more than 51.4 percent of all nonwhite households in Monroe County occupied substandard units in 1960 as compared to 15.2 percent of all households.

(15) RACIAL DISCRIMINATION:

A recent (January 1969) national study based on census data showed that residential segregation in Rochester is on the up-swing. Further, segregation within the city is clearly paralleled by segregation between city and suburbs: in 1964, 96.6 percent of all nonwhites lived in the city.

Thus, while there is a great need for low and moderate cost housing, merely providing a greater num r of such units will not necessarily eliminate all of the constraints operating in and distorting the housing market in Monroe County.

The community is left with a special category of housing demand: a demand for equal housing opportunities for non-whites. The complete rejection by suburban communities of all low and moderate income housing is testimony to the severity of the problem of prejudice involved. While many community groups and agencies -- as well as individual citizens -- have been working for open housing, their various efforts have proved insufficient. Racial prejudice and discrimination must be considered one of the most serious obstacles blocking the construction of low/moderate income housing where it is needed.

Employment

(16) EMPLOYMENT AND THE HOUSING MARKET:

The relationship between employment and the housing market is fundamental. While the rapid growth of employment

opportunities in Monroe County during the last decade is a principal factor influencing our current housing shortage, the community's housing supply, in turn, directly affects labor market growth and the economic well-being of our community. Local industry cannot attract new employees if they cannot be adequately housed. In the absence of concerted remedial action to improve the community's housing, there can be expected a continued distortion of the labor market and a strangulation of the community's natural economic growth. (See also Section 31: Employment and the Location of Housing.)

Community Organization of the Housing Effort

(17) DECENT HOUSING - A COMMUNITY RESPONSIBILITY:

The concern for providing good basic housing is slowly being shifted from the individual to the community at large -- in

the same way that concern for basic educational needs and health needs have been assumed by the community. This is not to say that the provision of housing is fated to become a government function. Rather it is a growing recognition that a minimum level of standard housing is an individual right as opposed to a matter solely decided by economics and competition. It is to be hoped that, as the President's Committee on Urban Housing has said, decent housing will be provided by "existing subsidy programs and fuller private participation" making government only the "houser of last resort".

There is, however, a serious doubt as to whether our community is sufficiently organized and motivated to fully participate in the transition to decent housing for all. We may be forcing the Federal Government into the position of

"houser of the last resort" for our low and even our moderate income families.

(18) FRAGMENTATION IN THE COMMUNITY HOUSING EFFORT:

Organized efforts in the Rochester area to provide solutions to low and moderate income housing problems have typically been fragmented and uncoordinated. On both national and local levels no provision has been made to focus the responsibilities for designing and implementing solutions to low/moderate income housing problems in any single agency or jurisdiction.

In the Rochester area, the concern over low/moderate income housing problems has been manifested by the formation of many separate groups with their own purposes and organization. Some groups have developed into strongly independent and even competitive agents working toward highly specific objectives. The

tendency toward this type of independence and competition has proved counter-productive. Competition for dwelling units and land have increased rather than decreased costs. Further, while many groups need to perform similar specialized functions, the duplication of these functions has not only been inefficient, it has often been impossible. Thus one group may perform satisfactorily in one function and fail completely in another, and perhaps sacrifice an entire project as a result -- or delay its completion for long, unnecessary periods.

Inadequate organization has also led to a failure in forcefully representing low and moderate income housing interests both inside and outside the Rochester area.

The failure to assign specific responsibilities for increased low and

moderate income housing supply reflects both a reluctance to establish clear public priorities to solve housing shortages and a lack of conviction as to the most desirable approach.

Better leadership and more definite public commitment are needed if this community is to move toward providing decent housing for all its citizens.

(19) HOUSING PROGRAMS:

Federal and New York State programs have largely made Rochester's efforts in low and moderate income housing possible. At the same time, the use of these programs has been severely limited by insufficient Federal and State funds, bureaucratic red tape and, so far, the actual rejection of programs by all Monroe County jurisdictions outside the City of Rochester.

(20) LOW INCOME HOUSING PROGRAMS:

The Rochester Housing Authority is directly or indirectly responsible for all of the various low income housing programs in Rochester. It is a simple fact that low income housing requires substantial government subsidy -- and, in most cases, the Housing Authority is the only agency either able or willing to use the state and federal programs which allow sufficient subsidy. This is not to say that a housing authority is the only structure under which low cost housing can be provided. At least two federal programs -- Section 23 Leasing and Rent Supplement -- are technically available to various jurisdictions or private sponsors. But a number of factors -- including lack of local commitment and knowledge, inadequate federal funds, and suburban resistance to low income housing -- have

combined to make the Rochester Housing Authority the only supplier of (publicly assisted) low income housing. This, of course, has also meant the restriction of such housing to the Rochester city limits. Thus, the housing needs for many low income households -- especially the elderly -- continue to to unmet.

(21) MODERATE INCOME HOUSING PROGRAMS:

Moderate income housing has received considerably more attention in Rochester in the past than low income housing. Moderate income units have been built at over double the rate of low income units. Rochester Management, a non-profit housing management corporation organized in 1949, operates the largest number (over 1,600 units as of January, 1969) of subsidized moderate income rental housing units in the Rochester area. To this date, all publicly assisted moderate income

projects are located in the City of Rochester.

(22) URBAN RENEWAL:

Urban renewal does not add directly to the housing inventory -- and its initial stages obviously subtract substantially from the inventory. In very rough figures, the urban renewal process in Rochester (1968-1977) involves the displacement of approximately 5,300 families and the construction of an estimated 7,700 units. The renewal process does not ensure that the estimated 7,700 units will be built, but it does provide a favorable climate for new construction and rehabilitation. Of the several projects underway, residential redevelopment has occurred in only two -- the Third Ward and Baden-Ormond areas.

(23) NEW YORK STATE URBAN DEVELOPMENT CORPORATION (UDC):

The UDC is a public benefit

corporation having the powers to undertake residential, industrial, commercial and urban renewal projects. The Corporation's major purpose is to "facilitate private ownership of, and private investment in, such projects by offering for investment purposes fully financed, viable, approved and completed projects." The UDC has great potential for speeding the development of needed housing throughout Monroe County -- and especially in the town areas. Its powers permit it to execute the type of high quality planning long needed in this area.

The Corporation recently agreed to help a local nonprofit housing sponsor, Metropolitan Rochester Foundation, to build a moderate income housing project near East Rochester. The Corporation is also studying various other project

possibilities in Monroe County.

Comprehensive Planning

(24) COMPREHENSIVE PLANNING:

Comprehensive planning concerns the total planning of all aspects of community growth where such planning will help solve existing problems and avoid future ones. Until recently, however, such planning had almost exclusively emphasized physical aspects of community growth: utility systems, transportation and general land use. As a consequence, very little or no planning was done for housing or residential land use. (See also Section 28: Alternative Patterns of Development.)

(25) HOUSING IN THE COMPREHENSIVE PLAN:

The National Housing Act of 1968 requires that all future comprehensive plans assisted by federal funds include consideration of housing needs and land

use requirments for housing. Since most local jurisdictions preparing comprehensive plans use such federal aid, we can expect the comprehensive plan to become a useful tool in the provision of more and better housing in an improved residential environment. Local planning agencies -- the City Planning Bureau, the Monroe County Planning Council, and the Genesee/Finger Lakes Regional Planning Board -- are in various stages of developing detailed housing plans. It will probably be at least two or three years before any of these agencies release comprehensive recommendations and guidelines for residential development. The community can then expect an increase in the quality of on-going residential development. For example, even at this time, the Monroe County Planning Council is working with several towns in an

attempt to help them encourage better residential development through improved zoning and subdivision controls.

Land Use Problems and Controls

(26) LAND USE PROBLEMS IN MONROE COUNTY:

Monroe County is being plagued by many problems which are brought about by inadequate land development practices. These problems are often obvious: water pollution, drainage problems, destruction of conservation area and attractive land features, traffic friction, congestion and high accident rates, loss of recreational use, and unnecessarily costly municipal services. These problems combine to create obsolescence, deterioration, and the malfunctioning of neighborhood components.

Less obvious is the fact that these regrettable land development practices have directly contributed to increasing

the cost of housing. Further, environmental pollution, unattractiveness, uniformity and social stratification are far more common today in Monroe County than twenty years ago.

(27) MISDIRECTION OF LAND USE CONTROLS:

Land use problems can be attributed, at least in part, to the failure of local communities to give necessary priority to the basic problems of land use. For the most part, land use controls have been used to serve the purposes of other community needs: short term municipal and school revenue needs being the most obvious examples.

At present, the land use control mechanisms used by the towns encourage such poor land uses as strip residential and commercial development, uniformity of residential design, and inefficient service networks. Good design and

creative use of topographical features through cluster development and average density zoning are often thwarted by the existing zoning and sub-division regulations.

(28) ALTERNATIVE PATTERNS OF DEVELOPMENT:

Monroe County need not fall inevitably into the nightmare pattern of urban sprawl. The community has within its grasp the tools to reshape existing patterns and creatively channel future development decisions -- both public and private. A particularly important concept for redirecting present patterns is the so-called PLANNED UNIT DEVELOPMENT (PUD). In the PUD, an integrated community instead of an individual lot becomes the unit for planning. The PUD has the following basic objectives:

(a) Flexibility and efficiency in land use which aid in lowering development and maintenance costs;

(b) Integration of commercial, recreational, vocational and open land uses with residential uses;

(c) Preservation and development of conservation and recreation areas as an integral part of neighborhood design;

(d) Encouragement of the development of a variety of residential types suitable for all age groups and economic levels;

(e) Appropriate utilization of land which would normally not be developed because of topographical or economic factors.

Generally, PUDs exceed 100 acres in size -- and probably realize their greatest potential when they approach or exceed 1,000 acres.

(29) APPROVAL PROCEDURES FOR PLANNED UNIT DEVELOPMENTS:

To date, attempts in this area to execute larger planned unit developments have met with failure. Existing approval procedures for such developments, through uncertainty of legal position, time-consuming red tape and out-right rejection, play

a major part in bringing about such failures. Thus the adoption by towns of reasonable PLANNED UNIT DEVELOPMENT ORDINANCES is essential if our community is to substantially improve its process of land development. While many experts feel that existing state enabling legislation allows towns to adopt PUD ordinance, there can be no doubt that specific PUD ordinance enabling legislation would speed town adoption of such ordinance through clarification of legal standing.

Vacant Land in Monroe County

(30) VACANT LAND AND POTENTIAL HOUSING SITES:

There are approximately 403,000 acres of land within Monroe County excluding the City of Rochester. There is a total of approximately 276,000 acres of vacant or undeveloped land under private ownership in parcels five acres in size or larger. This land is owned by fewer than 5,700

individuals or entities. This considerable amount of vacant land is an indication that land for residential use in most towns is not - or need not be -- a permanently serious problem at this point in time. Usable land is still plentiful -- good land use planning and implementation along with revised vacant land taxing procedures can make it available for both general and low and moderate income residential use.

A general survey of vacant parcels in the ten towns surrounding Rochester revealed over 700 potential sites suitable for low and/or moderate income housing. While some of these sites are probably unavailable for one reason or another, there are undoubtedly a sufficient number of good sites for low/moderate income housing in the towns at this time.

Locating New Housing in Monroe County

(31) EMPLOYMENT AND THE LOCATION OF HOUSING:

In identifying the specific areas in which housing demand is most intense, the guiding principle is that any individual in the community should be able to find suitable housing in the proximity of his place of employment. The location of housing near one's place of work has important advantages for the individual worker and his family, the employer, and the community. The two most important of these advantages are the greater convenience and lower transportation costs to the individual employee. Limited housing opportunities in this area have prevented a great many Monroe County workers from receiving these advantages. The people who are most seriously affected by employment-residence dislocation are, of

course, the low and moderate income groups. People in these groups are the least able to pay high transportation costs and the most likely to be dislocated.

Some of the consequences of housing dislocation in Monroe County have been to burden moderate income workers with excessive transportation costs, to deprive low income workers of job improvement, and to leave employers with a shortage of modestly paid, but essential, blue-collar labor. The result for the community as a whole has been increasingly congested streets and thoroughfares and higher street maintenance and traffic control costs.

(32) LOCATING NEW HOUSING:

The largest accumulated shortage for replacement units exists in the City of Rochester, as opposed to the suburbs. But the city has been the victim of the

failure of the suburban market to keep abreast of its low and moderate income housing needs. In the future, to meet growth requirements, the towns must provide for at least two-thirds of the county's overall need for new units.

Property Taxation and Housing

(33) PROPERTY TAX AND LOW/MODERATE INCOME HOUSING:

The present dependence on property taxation for local services (especially schools) encourages low density, high value zoning. Fiscal pressures on local government have forced them "to permit only those types of land uses which add enough assessed valuation to the tax base to finance the municipal services required." Obviously, these fiscal practices have effectively blocked low and moderate income housing from being built in the towns.

(34) NEW DIRECTIONS IN FINANCING LOCAL GOVERNMENTAL SERVICES AND EDUCATION:

In order to remove the negative impact of property taxation on building needed housing in Monroe County, the following new directions in financing local services and education should be considered:

(a) Areawide local governmental services should be financed on an areawide basis;

(b) School tax burdens should be equalized by partial county-wide financing;

(c) An income tax should be used for educational purposes to restrict dependence of school financing on the property tax.

Need for Housing Data

(35) BASIC DATA NEEDED TO EVALUATE HOUSING QUALITY IN MONROE COUNTY:

Existing sources of information on housing are wholly inadequate for detailed planning and evaluation. It is necessary that certain data indicators be maintained to allow effective planning and evaluation

of community progress toward meeting specific housing objectives. For these purposes, the following standardized data should be maintained on a periodic basis for Monroe County (including the City of Rochester):

(a) Data on new residential building permits and certificates of occupancy;

(b) Data on residential demolitions, conversions and mergers;

(c) Data on waiting lists and number of applicants to low and moderate income publicly assisted housing projects;

(d) Data on the condition and overcrowding of housing;

(e) Data on owner-occupied and renter occupied housing vacancies.

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SUMMARY OF RESEARCH STAFF RECOMMENDATIONS

(Summary of selected recommendations primarily from Housing in Monroe County, New York -- a series of five study memoranda prepared for the Metropolitan Housing Committee by the Rochester Center for Governmental and Community Research, Inc., January, 1968-June, 1969)

Housing Goals

It is appropriate that the decade of the 1970s be established as the time period during which substantial strides will be made toward providing decent housing in a suitable environment for every citizen in our community. Toward this ultimate goal, the research staff recommends the adoption of the community-wide housing goals presented herewith.

As part of its general housing philosophy the community should accept decent housing as the right of every citizen. Further, the attainment of this right should be accepted as a concern and responsibility of government aided and supported by the private

EXHIBIT F

sector of the community.

Flexibility of housing choice should be afforded all families and individuals within each income level. Such choice should be extended both to the type of housing and to its location. Further, it should be suited to the needs of the family or individual in relation to:

(1) Income capability;

(2) Place of employment;

(3) Requirements for transportation and community services;

(4) Desire to rent or purchase;

(5) Desire for open space, recreation, cultural pursuits and the like.

Research staff findings indicate that flexibility of choice is not available to the elderly couple and individual or to the young family and individual. Further, as a whole, minority groups are denied sufficient housing choice and suitable

housing. Most of these families and individuals have moderate or low incomes.

The solution for increasing the supply of moderate income housing can probably be achieved through a more varied and positive approach to private construction and financing of residential developments. On the other hand, in order to extend a sufficient supply of adequate housing to families and individuals with low incomes, it will be necessary to provide subsidies and incentives which may take a variety of forms such as: public housing, subsidized private housing, non-profit housing, company housing, mortgage incentives or guarantees, or income, mortgage, or rent supplements. The choice of such programs must be consistent with such planned social objectives as desegregation, reduction of undesirable population densities, provision

of freedom of choice and movement, and freedom from the institutionalization or social stigma associated with poorly designed public programs. Long term economic considerations should also be a determining factor in this choice.

It should be possible through proper attention to good planning principles -- with the help of flexible zoning standards and open space planning -- to design a housing program which will:

(1) Reduce excessive densities in existing urban neighborhoods;

(2) Maintain desirable density standards in new neighborhoods;

(3) Provide a desirable mix of residential facilities which will meet the needs of people by providing suitable housing near their place of work, near transportation services, and near needed community services and cultural and recreational facilities;

(4) Achieve proper separation between residential neighborhoods and other land uses;

(5) Provide for adequate traffic circulation.

Further, it should be possible to accomplish all of these housing program objectives with aesthetically attractive developments and within reasonable economic limitation.

It is apparent that to achieve these goals community approaches towards a housing solution must be varied and aimed at each level of need. As a matter of fact, assuming the natural moving up process to more suitable and desirable housing on the part of all income levels of our community, solutions aimed at one level will help solve other levels of housing needs by releasing vacated units for more suitable uses. This means, of course, that all efforts and solutions should not be aimed at the lowest level of housing. Encouraging the moving up (and relocation) process will tend to

eliminate the presently excessive pressures of demand for less desirable units and will create the opportunity either for renovation or removal of these units. Creating a more realistic balance between supply and demand will at the same time help reduce the unnaturally high rentals and income value of deteriorated central city housing.

These goals might appear overly optimistic, but they are definitely within the capabilities of this community if each possible course of corrective action is given proper communitywide attention and support.

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Implementing Housing Goals

The following implementing actions are recommended by the research staff as necessary in any realistic approach to achieving the broad community housing goals outlined above. Several basic steps must be taken to organize the community housing effort: (1) securing a communitywide commitment to broad housing goals; (2) providing an organizational framework for housing; and (3) developing a housing strategy of actions for implementation.

COMMUNITYWIDE COMMITMENT TO BETTER HOUSING

Without an unqualified public commitment to resolve our housing shortage and related urban problems, there can be little doubt as to the consequences: growing social injustice; community instability; environmental decay; and possible economic decline. Therefore, it is urged that the

EXHIBIT F

Metropolitan Housing Committee and all others concerned with the housing problem in this area petition the Rochester City Council, the Monroe County Legislature, and the town and village boards to formally express public support for the following commitments to housing:

(1) The adoption of a public policy establishing the 1970s as the decade during which decent housing in a suitable living environment will be provided to meet the needs of every individual and family in the Rochester-Monroe County area.

(2) The setting of priorities in the use of resources and leadership to improve existing housing and expand new housing opportunities for low and moderate cost housing.

(3) The setting of specific production goals in Monroe County for LOW AND MODERATE INCOME HOUSING which will reach an annual average for the next seven years of approximately:

---2,700 new housing units in the City of Rochester
---4,700 new housing units in the towns of Monroe County

Since almost 90 percent of the projected increase in total households are headed by the under 35 or over 55 age groups, particular emphasis should be placed on the housing needs of the young and the old.

(4) The adoption of the planned unit development and planned neighborhood concept as the preferred approach to land development. The intent of this concept is to build communities and neighborhoods which provide:

(a) a variety of housing types,

(b) a range of housing costs and tenure,

(c) open space,

(d) convenient shopping facilities,

(e) reduced friction with the automobile,

(f) increased opportunities for nearby employment, recreation and other qualities presently unavailable within the existing pattern of residential land development.

Included in this new comprehensive approach is the development of large planned communities where all residents including the young families and the

elderly can live in a high quality environment at a reasonable cost.

AN ORGANIZATIONAL FRAMEWORK FOR BETTER HOUSING

The presently fragmented and uncoordinated housing efforts of our community are not sufficient to solve our housing problems. Housing efforts should be channeled into a responsible and responsive Housing Council very similar in nature and structure to the Health Council.

The Housing Council would function as a deliberative body concerning major policy matters. It would be composed of representatives from relevant agencies, institutions, and groups (including, of course, non-profit housing corporations). The Housing Council would have an executive committee elected from its membership which would perform the more routine tasks of policy interpretation and

oversee the operations of its staff.

The Housing Council staff would operate from a Housing Development Center. This Center would actually represent a consolidation of the numerous functions now partially performed by individual groups. In fact, the staff would be largely drawn from existing groups and supplemented only where necessary (to fill gaps in technical services). Under the direction of a staff coordinator (or director), existing services and technical skills would be sought out and extended to Council members and other community agencies under contract or cooperative agreement. The Housing Development Center would be active in the following areas:

(1) Housing planning;

(2) Coordination of housing programs, projects and funds;

(3) Housing program evaluation and development;

(4) Technical services (e.g., legal services, property management, land acquisition, etc.);

(5) Housing statistics and research;

(6) Housing services (e.g., occupant selection, relocation, housing registry, housing counseling, etc.);

(7) Community relations.

The Housing Council through its Housing Development Center would be responsible to see that all of the functional areas outlined here are available to the community -- although the Center would not necessarily provide all the services directly.

The Housing Council, if adopted, offers the community the very real opportunity to concentrate its housing expertise: strengthening weak skills and perfecting others. The Council would help insure the community against missed

opportunities in low and moderate income housing -- and would provide the full-time dynamic leadership needed to realize Monroe County's housing aspirations.

Practically speaking, someone must assume the responsibility to create the Housing Council. It is recommended that the City Council and the County Legislature assume this responsibility and authorize the City and County Managers to take the steps necessary to establish the Council.

TOWARD BETTER HOUSING: SPECIFIC RECOMMENDED ACTIONS

The following list of recommended actions represents steps which are probably necessary to achieve the broad housing needs of our community. This list is not necessarily comprehensive nor does it establish a sequence of priorities. Research findings, however, do

indicate that these are basic steps which should be made part of the Housing Council's initial program or, lacking a Housing Council, should be assigned to appropriate, if diverse, agencies for accomplishment.

(1) Evaluation of all ongoing housing programs;

(2) Strong support for selected housing projects and programs presently underway or in the preconstruction or planning stage (the Housing Council staff could play the part of aggressive negotiator in pressing for the swift execution of projects now bogged down);

(3) Setting of specific objectives for housing including target dates, general locations and size of specific projects;

(4) Negotiations with the urbanizing municipalities of Monroe County to accept planned unit development ordinance and similar improved land use control mechanisms as recommended in Memorandum No. 4, and the encouragement of better designed and better balanced housing proposals by developers and builders;

(5) Invitation of the New York State Urban Development Corporation to operate (in a negotiated capacity) with the housing industry and others in Monroe County, in a series of (a) small (50 unit) scattered site moderate income projects in all urbanizing towns, and (b) one or more planned communities, satellite towns or new towns (Note: this could be done with the consent and cooperation of the respective jurisdictions including a "test use" of a PUD ordinance or, especially in the case of the small projects, without the cooperation of the jurisdiction by invoking UDC's extraordinary powers);

(6) Review and endorsement and (if desired) suggested revisions of the housing components of the comprehensive plans of area planning agencies;

(7) Wide community involvement in Housing Council activities and housing activities generally through effective use of area communications media;

(8) Development of an official county master land use plan for the towns of Monroe County; the plan should include suggested and negotiated residential density patterns (including various economic mixes of units) and appropriate areas for planned

unit developments; initial allocations could be based on a detailed Work/Residence Distribution Study -- such as the one carried out for the Metropolitan Housing Committee by the Rochester Center for Governmental and Community Research;

(9) Negotiation with municipalities and the County Legislature for the acceptance of a County (master) land use plan;

(10) Where other efforts fail, the recommended use of "sanctions" (e.g., controlled access to federal and state funds for roads, sewers, schools, etc.) where reasonable residential land use and density patterns are not adopted (such sanctions could be initiated by the various planning agencies concerned);

(11) Encouragement of the use of the rent supplement program and Section 23 (public housing leaseback) in towns and villages (could be negotiated by Housing Council and arrangements made to manage units where necessary);

(12) Consolidation of housing services (e.g., tenant selection in subsidized projects; relocation; counseling; waiting lists, etc.);

(13) Restructuring and strengthening of the housing registry function

now performed by the Monroe County Human Relations Commission (See: Rochester Bureau of Municipal Research, Plan for a Housing Registry, January, 1966);

(14) Seeking amendment of the State Constitution to permit creation of a Monroe County Housing Authority;

(15) Reform of the real property tax according to recommendations set forth in the Rochester Bureau of Municipal Research's The Real Property Tax, May 1968, and similar studies, particularly to reduce the burden of public school financing on real property;

(16) Promoting the establishment of the right to "decent" housing as a statutory right with the obligation and responsibility to ensure this right for every citizen lodged in an appropriate state and/or county administrative mechanism;

(17) Probably through a non-profit corporation, the creation and execution of a demonstration project for the industrialized production of housing units for low and moderate income housing projects. (Needs exploration in depth by the community as an alternative method of bringing down housing costs.);

(18) Increasing the availability of technical planning services from the Monroe County Planning Council;

(19) Encouragement of the use of advance land acquisition by Monroe County in order to carry out land use plans;

(20) Strengthening of the authority of county, regional and state planning agencies to allow enforcement of approved land use plans and residential densities and "economic" mixes;

(21) Restructuring of the building and housing code enforcement functions of the city, towns and villages -- possibly merging the separate enforcement operations into a unified, countywide building and housing code administration. Such a merger would probably entail the adoption by all county jurisdictions of a single building and housing code.

These actions are without a doubt ambitious and controversial. If they seem too grand, it is only because the seriousness of the shortage of adequate low and moderate income housing and the quality of the entire residential development pattern

has not been properly faced or understood. The demonstrated mass and inertia of the problem are very great. Timidity is no response. The leadership of the metropolitan Rochester community must act boldly.

ROCHESTER CENTER FOR GOVERNMENTAL AND COMMUNITY RESEARCH.

The Rochester Center for Governmental and Community Research is part of the legacy of George Eastman. In 1915 the founder of Eastman Kodak Company gave personal and financial support to establishment of the Rochester Bureau of Municipal Research, an organization devoted to the principles of non-partisan evaluation and improvement of local government.

In the years since its founding the name of the organization has been changed and its scope has broadened, but the objectives set forth by Mr.Eastman have remained unchanged.

The Research Center is a private, non-profit, non-partisan agency. Its studies and research reports revolve around the issue of effective government in its broadest sense. The Center thus involves itself with urban and community concerns on a local and regional basis, and the examination of relevant public policy.

Its staff members represent a range of academic disciplines from statistics to economics, from sociology to political science and public administration. Their professional consultation services are available upon request from public officials and agencies, or appointed citizen committees.

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As a non-profit agency, the Research Center depends primarily upon voluntary contributions. Local governments often pay nothing for the Center's consulting or advisory services. In the case of major studies they usually pay a portion of the true cost. Studies for non-local jurisdictions are fully reimbursable.

The community is rewarded for its voluntary support of the Center by improved public services and more economic and efficient governmental operation. Adoption of various research study recommendations has often led to major tax savings.

The Research Center has been careful to preserve its non-partisan status in the community, working closely with all administrations on the public's behalf.

The home of the Research Center is the historic Jonathan Child House, built in 1838 by the first mayor of Rochester and pictured on the Center's seal. It was recently purchased by the Center from the Landmark Society of Western New York, Inc. The Research Center has restored the house and adapted it successfully for its use.

EXHIBIT G

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HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC.

CHARTER MEMBER LIST

1. Action for a Better Community, Inc. (ABC)
2. American Association of University Women, Rochester, New York Branch
3. Asbury First United Methodist Church Housing Committee
4. Association for the Blind of Rochester and Monroe County, Inc.
5. Better Rochester Living, Inc.
6. Bishop Sheen Housing Foundation
7. Brockport Action Task Force on Housing (BATH)
8. The Build Your Own House Club
9. Center for Community Issues Research
10. The Church of the Incarnation Episcopal, Vestry
11. Church Women United in Rochester and Vicinity, Inc.
12. Citizens Planning Council of Rochester & Monroe County, Inc. (CPC)
13. Community Interests Inc.
14. Community Volunteers of Rochester, Incorporated
15. Cooperative Extension Association of Monroe County
16. FIGHT
17. Four Downtown Churches of Rochester, New York, Housing Department of ACCT
18. Frederick Douglass League
19. Genesee Rapids Neighborhood Association
20. Genesee Settlement House
21. Greece Residents Organized to Act (GRO-Act)

22. Holy Name of Jesus Parish, Human Development Task Force
23. Housing Opportunity Program Enlistment Incorporated (H.O.P.E.)
24. I.C. Housing Development Fund Company, Inc.
25. The Junior League of Rochester, Inc.
26. Ladies Association for Community Enrichment (L.A.C.E.)
27. Lake Avenue Friendship Corporation
28. League of Women Voters of the Rochester Metropolitan Area
29. Metro-Act of Rochester, Inc.
30. Model Neighborhood Council
31. Monroe County Bar Legal Assistance Corp.
32. Monroe County Department of Social Services
33. Monroe County Planning Council
34. Montgomery Neighborhood Center, Inc.
35. 19th Ward Community Association, Inc.
36. National Council of Jewish Women, Rochester Section
37. New Rochester
38. North East Area Development, Inc. (NEAD)
39. Northeast Property Upgrading Association (NEPUA)
40. Northeast District Council, Inc. (N.E.D.C.)
41. Northwest Housing Task Force
42. Office of Human Development
43. Olean Townhouses
44. Penfield Action for a Creative Tomorrow (PACT)
45. Penfield Better Homes Corporation
46. Penfield Christian Landlords, Inc.
47. Priests Association of Rochester, Social Action Committee

48. Rochester Area Committee for Open Housing (RACOH)
49. Rochester Area Council of Churches Development, Inc. and Rochester Area Council of Churches Housing Development Fund Co. Inc.
50. Rochester Jaycees
51. Rochester Housing Authority (RHA)
52. Rochester Management, Inc.
53. Rochester Neighbors, Inc.
54. Rochester Soul Christian Leadership, Inc.
55. Rochester Urban Renewal Agency and City of Rochester, Dept. Urban Renewal & Econ. Development
56. Rochester United Settlement Houses (RUSH), Housing Development Fund Company, Inc. (Harris Park Project)
57. Senior Citizens Action Council Inc. of Monroe County, State of New York (SCAC)
58. Sisters of St. Joseph, Social Concerns Committee
59. South East Area Coalition, Inc. (SEAC)
60. South Area Welfare Rights Group (SEWRG)
61. South Side Seniors (Citizens)
62. St. Thomas Episcopal Church, Christian Social Action (STECCSA)
63. Teen League of Rochester (TL)
64. Temple B'Rith Kodesh, Social Action Committee
65. Third Presbyterian Church, Session
66. Unitarian Housing Committee (First Unitarian Church)
67. WEDGE
68. Webster Council of Churches Housing Committee
69. Webster Human Relations Council
70. Western Monroe Community Project, Inc.
71. Young Womens' Christian Association of Rochester and Monroe County (YWCA)

EXHIBIT H

Attachment #7

Dec. 30

Hon. Joseph Ferrari
President, Monroe County Legislature
County Office Building
50 Main Street West
Rochester, New York 14614

Re: Housing in Monroe County

Dear Mr. Ferrari:

Early in 1967 the City and County, under authorization of the Rochester City Council and the Monroe County Board of Supervisors, jointly appointed a Metropolitan Housing Committee. The authorization stated the need for an effective metropolitan housing policy, further stating that "if such policy is to be effective..." a citizens housing committee is required in order to evaluate metropolitan housing needs and make recommendations "for the formulation" of a metropolitan housing policy. The Committee was specifically charged with inquiring into "Metropolitan Rochester housing needs, 1967-1976."

About a year later that Committee commissioned the Rochester Bureau of Municipal Research (now the Rochester Center for Governmental and Community Research Inc.) to perform the required research and report to the Committee. A series of reports was completed in 1969.

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These reports, under the title "Housing in Monroe County, N.Y." contained a complete analysis of the housing problem in Monroe County, together with suggested goals for reducing the crisis. It also included a list of 21 "specific recommended actions." The report was neither recognized nor acted upon by the Committee, the County Legislature, or City Council.

Concerned with this seemingly deliberate inaction in the face of obvious need, an Ad Hoc Housing Committee was formed in June of 1970. It brought together representatives from a broad range of neighborhood associations, community interest groups, non-profit housing groups, and social service organizations. Its purpose was to create a "Housing Council", the organizational framework for housing in Monroe County recommended by the Bureau's study. Efforts to accomplish this purpose have progressed, and at the last meeting of the Ad Hoc Housing Committee it was unanimously agreed that the Committee would henceforth constitute the Housing Council of Monroe County and would serve the community in that capacity.

Since the problem must be approached on a county-wide basis, we believe that County Legislature must initiate the required action. Therefore, by copy of this letter, we petition the Legislature to take the following actions:

EXHIBIT H

1. Give official public recognition to the report "Housing in Monroe County, N Y" prepared for the Metropolitan Housing Committee.

2. Demonstrate that official recognition by creating a standing legislative committee concerned solely with action to resolve the housing crisis in Monroe County and instructing it to make specific immediate recommendations to the Legislature.

3. Commit themselves to implement the goals stated on pp 26 and 27 of the "Summary Report, Housing in Monroe County, N.Y." and take the actions stated on pp 29, 30 and 31 of that report

4. Create a Citizens Housing Advisory Committee to advise the County Legislature on housing matters. This advisory committee should consist of representatives from community interest and neighborhood groups in the Rochester-Monroe County area. The groups to be represented shall be chosen by the Housing Council of Monroe County

EXHIBIT H

Due to the deepening crisis and long history of inaction, the following dates, by which constructive action should be taken, are suggested for the like numbered previously listed items:

1. Two weeks after receipt of this letter.

2. Three weeks after receipt of this letter.

3. Five weeks after receipt of this letter (significant action).

4. Four weeks after receipt of this letter.

The idea that government should act to assure adequate housing for all is not new. A national goal of "a decent home and a suitable living environment for every American family" was stated in Section 2 of the Housing Act of 1949. Yet, while the County spends millions of dollars and employs thousands of people in other areas of public benefit, including public health and public welfare, it has not had any significant impact on housing.

Sincerely,

V.F. Vinkey, Chairman
Political Action Committee
Housing Council of Monroe County

VFV:klm

FOR FURTHER INFORMATION, CALL VIC VINKEY:
325-2000, x13982(daytime) 244-3761(evening)

EXHIBIT I

Statement to the Ways and Means Committee and the Intergovernmental Committee of the County Legislature. Tuesday, January 26, 1971.

HOUSING CRISIS IN MONROE COUNTY

GENTLEMEN: This statement is intended as a brief review of the housing crisis in Monroe County. There are at least three severe housing problems facing Monroe County: First, a housing shortage for low and moderate income families and individuals; Second, a lack of adequate housing-related services including a lack of family budget counseling, housing care training, and housing referral services; Third, a deterioration of residential environments because of inadequate public and private planning and development practices. I will briefly sketch the dimensions and nature of each of these problems - with special emphasis on the first: the desperate housing plight of our fellow citizens with low and moderate incomes - the elderly, young families, the handicapped.

First, the low and moderate income housing shortage. By low income I mean those families with annual incomes of less than $7,500. - and individuals or couples with annual incomes of less than $5,000. By moderate income I mean those families earning annual incomes of $7,500. to $10,000. - and those

EXHIBIT I

individuals or couples earning $5,000. to $7,5000. Obviously, these ranges are only approximate and may vary considerably depending on individual circumstances. To provide decent housing for these low and moderate income households, the Rochester Center for Governmental and Community Research has, as you probably know, estimated the need to build 7,400 new units each year over the seven year period 1969-75. This amounts to a total of approximately 52,000 units. Of these, 13,400 units are needed immediately to replace substandard housing, to provide market flexibility, and to relieve overcrowding and 38,500 are needed to accommodate newly formed households and other future needs. In addition, approximately 11,500 occupied homes and apartments are in need of major rehabilitation. The Research Center's report, cited here, is only one of many reports - local, state and federal - which have documented and reaffirmed Rochester-Monroe County's serious housing problems.

Is our community moving toward an adequate solution to the low and moderate income housing shortage? While the need for low and moderate income housing units has been estimated at 7,400 a year, we actually have averaged only 5,400 housing units per year for all income levels during the past decade! Furthermore, 1969 was one of the worst years in the 1960's for producing housing - and 1970 was by far the worst year for housing production in over 10 years. Throughout the 1960's the production and the availability of housing for low and

moderate income families and individuals has decreased. The private sector has produced virtually no housing for even moderate (no less low) income households since the mid-1960's .

It is true that some low and moderate housing has been produced through various state and federal programs. So far, however, all of this housing has been concentrated in the City of Rochester - and production has been very limited - an annual average of fewer than 400 units in the 1960's. It is also true that several public and private agencies - the Metropolitan Housing Foundation, the Rochester Housing Authority, the New York State Urban Development Corporation, etc. - are planning substantial low and moderate income housing construction programs throughout the county over the next five years. However, even if all the now planned housing were actually constructed, we would be left with a substantial deficit of unmet housing needs. And, needles to say, planned housing - especially for low and moderate income families - has a notorious reputation of never being realized. The obstacles to building decent housing in the quantity needed are many.

So, to return to the question - Is our community moving toward an adequate solution to the low and moderate income housing shortage? I must answer: NO! We are not ! Although laudable and

substantial, present plans, even if realized, would amount to probably less than 50 percent of our housing needs as presently recognized. Greater, more organized and far more determined leadership is needed.

A second major housing problem is the lack of coordinated, adequate housing-related services. While services for relocating families displaced by certain public actions, services for training in proper housing care, and services for budget counseling, housing placement referrals and the like to exist in our community, such services are very limited and almost entirely uncoordinated. Thus, many, if not most, citizens seeking housing are denied the assistance they need, many are pushed from one office to another in a never ending circle of red tape and frustration. Besides this shockingly unfair treatment of our fellow citizens, the community also denies itself its fair share of the benefits of federal and state housing-related programs - as well as denying itself a more complete and reasonable use of its existing housing stock.

Let me elaborate. By failing to be sufficiently aware of our citizens' housing needs on day-to-day basis, we fail to know our eligibility for state and federal housing programs -programs for which we are paying but receiving less than our fair return. Under-utilization of such programs is particularly obvious in all our county's municipalities outside the City of

EXHIBIT I

Rochester. Our failure to establish a working registry of housing units with a good placement referral service has meant both inadequate and inappropriate utilization of the existing housing stock. We fail to rehabilitate units which should be rehabilitated; we fail to quickly reoccupy certain types of units as they become vacant; we under-utilize many housihg units whose use could be maximized. It is impossible to do justice to this complex subject of housing-related services here - but I call your attention to our acute need for greatly improved services and service coordination.

A third major housing problem is one with which we all have either direct or indirect experience: the deterioration of residential environments because of inadequate public and private planning and development practices. What do I mean by"deterioration"? I mean the excessive separation of place of residence from place of work (as well as from schools, recreational facilities, open space, shopping and the like). I mean excessive traffic congestion and high accident rates caused by virtually unlimited access of driveways (residential and commercial) to our major county thoroughfares (Ridge Rd.; Route 31; West Henrietta Road - to name a few). In short, I mean the entire series of unnecessary but acute problems - from water pollution to unnecessarily high municipal service costs - brought about

EXHIBIT I

by insufficient attention to urban planning and design. Among other things, the absence of an official Monroe County comprehensive land use and development plan has contributed to this present regrettable state of affairs. Guidelines,which could help greatly to develop **inter-municipal** solutions to growth problems and, indeed,to prevent such problems in the first place - do not yet exist.

All three of these problems - the low and moderate income housing shortage, inadequate housing services, and deteriorating residential envirnments - combine into one large problem which can truly be called - and must be recognized as - a serious housing crisis in Monroe County.

Lawrence Witmer, Housing Council of Monroe County.

BEST COPY AVAILABLE

EXHIBIT J

By Messrs. Williams and Santoro

Intro. No._____

RESOLUTION NO._____of 1971

CREATING A SPECIAL COMMITTEE ON HOUSING.

WHEREAS, the Metropolitan Housing Committee, charged with inquiry into metropolitan Rochester's housing needs for the period 1967-1976, employed the Rochester Center For Governmental and Community Research which in a report made public in April, 1970 analyzed various components of the housing problem and recommended certain actions be taken,

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE COUNTY OF MONROE as follows:

Section 1. A special committee to consist of five (5) Legislators to be appointed by the President is hereby

EXHIBIT J

created to analyze the actions recommended in the report entitled "Housing in Monroe County, N.Y." and to submit such resolutions to the County Legislature in relation to the implementation of the report as the Committee deems advisable.

Sec. 2. This resolution shall take effect immediately.

Ways and Means Committee
Intergovernmental Relations Committee

February 25, 1971

File No. 71-18

EXHIBIT K

70 North Water Street
Rochester, New York 14604
(454-2770)

May 5, 1971

Mr. Gordon B. Anderson
County Legislator
110 Newcastle Road
Rochester, New York 14610

Dear Gordon:

It has now been more than a month since our first meeting with the Special Legislative Committee on Housing which you chair. We are encouraged by your obvious interest and concern about the housing crisis and hope to continue working with you and other members of the Housing Committee. However, we are greatly distressed by the Committee's failure to take more immediate and positive action on the eight items which we proposed at our initial meeting. We proposed these items because they were all amenable to immediate action. Yet, you have completed action on only two. Some interpret this as a direct and negative indication of the results which the committee can be expected to produce.

In particular, we believe that the Committee presently has sufficient information to indicate the desirability of recommending that the County Legis-

EXHIBIT K

lature recognize and endorse the Housing Council of Monroe County. As you know, the city passed a resolution of endorsement several months ago. We do not know of any questions of legality or procedure which prevent the legislature from taking this action. Current plans are to "officially launch" the Council during "Housing Week" (June 20-26). It would be most appropriate for an official endorsement to be approved by the full legislature well in advance of those dates. Incidentally, we hope to have Mr. George Romney, the Secretary of Housing and Urban Development, as a speaker for the occasion.

The remaining items are equally important. We recommend that the committee, as a matter of good business practice and a demonstration of concern, attempt to make recommendations on all of the eight points by mid May (May 18, 1971). If, for some reason, recommendations cannot be made by then, we would appreciate very much hearing from you in that regard by the aforementioned date. This would enable us to achieve a better understanding, of any problems you envision and a chance to provide whatever assistance we can.

Thank you.

Sincerely,
/s/ Vic
Victor F. Vinkey
Chairman, Political
Action Committee
Housing Council of
Monroe County

EXHIBIT L

SUGGESTIONS FOR IMMEDIATE ACTION BY THE SPECIAL COMMITTEE ON HOUSING OF THE MONROE COUNTY LEGISLATURE

1. Recognize the Housing Council of Monroe County

2. Recommend endorsement of specific housing goals by the full legislature (Number of units to be constructed in a specific time span)

3. Accelerate, to the maximum extent possible, completion of the County Master Plan, by additional funding or reording of priorities within the planning council. First priority to be given to the housing component of that plan.

4. Recommend implementation (by passage of appropriate legislation) of Section 239 n of the General Municipal Law (Subdivision Review).

5. Endorse the state "Community Development" bill and associated bond issue by sending an appropriate message from the county legislature to the state legislature.

6. Recommend appointment of a special Monroe County Tax Study Committee to investigate reform of the real property tax.

EXHIBIT L

7. Take a tour of housing conditions in Monroe County

8. Recommend a county legislative resolution authorizing and suggesting close working relationships between the Monroe County Planning Council and UDC -Greater Rochester, Inc.

Political Action
Committee
Housing Council of
Monroe County
March 24, 1971

EXHIBIT M

MONROE COUNTY LEGISLATURE

GORDON B. ANDERSON
Assistant Majority Leader
Legislator -- 21st District
110 Newcastle Road
Rochester, New York 14610
Tel. 482-8580

COUNTY
OF
MONROE
STATE OF
NEW YORK

June 9, 1971

Mr. Victor Vinkey, Chairman
Political Action Committee
Housing Council of Monroe County
134 Nunda Blvd.
Rochester, New York 14610

Dear Vic,

I regret the delay in answering your letter of May 5th to me. In your letter you requested a review of the eight suggestions presented to the County Special Housing Committee. If I recall correctly, one of the first requests made by the Housing Council of Monroe County was that a Special Housing Committee of the Monroe County Legislature be appointed. We now have such a committee. That is one request fulfilled.

Now let's consider the eight specific requests made to the Special Housing Committee.

1. Recognition of the Housing Council has not been formalized, but tacit approval has been given. The Special Housing Committee meets

EXHIBIT M

with representatives of the Housing Council and obtains valuable information and direction from the Council.

2. Recommendations of housing goals as presented in the Housing in Monroe County publication have not been accepted to date.

3. Acceleration of the County Master Plan with priority to be given to the housing component of the plan is not feasible. The various components are inter-dependent and the master plan must be presented as a whole

4. It does not seem advisable for the County Housing Committee to recommend implementation of the 239N General Municipal Law. The Monroe County Planning Council has not recommended the implementation of this law. In fact, they are on record of not favoring implementation.

5. Endorsement of the state "Community Development Bill" by the County and City has been indicated by a letter signed by President Ferrari and Mayor May urging the local state legislators to support the passage of necessary legislation.

6. A letter from the Special Housing Committee requesting the appoint-

EXHIBIT M

ment of a 5-7 member County Study Committee will be submitted to the Monroe County Legislature on June 15th.

7. The Housing Committee has observed housing conditions in Monroe County through the courtesy of the Housing Council of Monroe County who provided routes and transportation for the tours.

8. Close working relationships between U.D.C. Greater Rochester and Monroe County Planning Council has been in effect and will continue. The accompanying letters confirm this fact.

In my opinion the counsel from your group has been helpful and you are to be congratulated on your achievements thus far.

Yours truly,
/s/ Gordon
Gordon B. Anderson,
Chairman
Special Housing Committee
of Monroe County

/ch

EXHIBIT N

Monroe County Legislature
County of Monroe, State of New York
Joseph N. Ferrari, President

Michael D. Pastorelle
Clerk

Joseph C. Peiffer
Deputy Clerk

407 County Office Building
Rochester, New York 14614
Telephone 454-7200 extension 545
Area Code 716

September 2, 1971

To The Honorable
The County Legislature
County of Monroe
Rochester, New York

Ladies and Gentlemen:

The Special Housing committee pursuant to the charge contained in Resolution No. 86 of 1971 has analyzed the report entitled "Housing in Monroe County, N.Y." In addition, counseling has been asked for and received from the various agencies involved in housing in Monroe County.

After extensive deliberation over information obtained through these sources, the Special Housing committee recognizes that the problem of housing cannot be solved within the boundries of the city of Rochester alone, and encourages all the people of our community, as well as

those in commerce and government, to review the need for housing as community-wide responsibility, and to seek solutions together.

The Special Housing committee respectfully submits the following recommendations to the Monroe County Legislature:

I. The formation of the Housing Development committee to be jointly created by the County Legislature and the City Council. Members of this committee would consist of the executive directors representing the following organizations.

1. Association of Town Supervisors
2. Chamber of Commerce
3. Citizen's Planning Council
4. City of Rochester Planning Commission
5. Council of the City of Rochester
6. FIGHT
7. Genesee-Finger Lakes Regional Planning Board
8. Housing Council of Monroe County
9. Metropolitan Rochester Foundation
10. Monroe County Legislature
11. Monroe County Planning Council
12. Rochester Home Builders Association
13. Rochester Housing Authority
14. Urban Development Corporation
15. Urban Renewal

The purpose of this committee is to bring together various elements of our community with the ability to make things happen in the field of housing. They would

represent planners, builders, government and private enterprises from the community.

II. Recognize the Housing Council of Monroe County (representing many community groups interested in housing problems) as one of several agencies concerned with solving the housing problems which exist in this County, and that the Legislature encourages the Council in its efforts to stimulate the community to find ways to provide decent housing for all that live in this County.

III. Endorse the revised housing goals of 79,000 units to be constructed in Monroe County during the period from now through 1980. Of this amount 54,500 is recognized as growth through 1980 and 24,500 are needed to replace sub-standard housing. Of the 70,000 units 60% or 47,500 units are designated for moderate and low income families.

IV. Encourage the Monroe County Planning Council to complete the County Master Plan as quickly as is feasible. The Housing Committee recognizes the need and importance of this plan as a tool to solving the many problems of our community of which housing is one of the most important.

V. Enact as a Local Law 239N of the General Municipal Law (Sub-Division Review). This law provides for a review of certain proposed sub-division plots

EXHIBIT N.

by the Monroe County Planning Council. Enactment of this law will help assure better land use throughout the County.

VI. Endorse the State Community Development Bill and associated bond issue by sending an appropriate message from the Monroe County Legislature to the State Legislature.

This bill is in the form of an amendment to the New York State Constitution. It has been passed by 1971 State Legislature. Must be passed by 1972 Legislature and submitted to State electorate in election of 1972 before it can be enacted.

VII. The Monroe County Legislature call upon the State of New York to enact a law providing for capital grants to assist local Housing Authorities in maintaining adequate operating, maintenance and tenant services at State-aided public housing developments.

VIII. The creation of a standing Legislature Committee entitled Community Development Committee. The committee would, among other things, deal with housing needs of the community; cultural aspects and work as liaison between the County Legislature and various planning groups with respect to land use and development.

The Special Housing committee requests that these recommendations be referred to

EXHIBIT N

the appropriate committees. We strongly recommend affirmative action by the County Legislature.

Respectfully submitted
Special Housing Committee
Gordon B. Anderson,
Chairman
R. Graham Annett
Jeremiah F. Clifford
Ronald J. Good
Dorothy M. Riley

EXHIBIT O

FOR RELEASE: 6 P.M., SUNDAY, JANUARY 24, 1971

MAY ASKS COUNCIL APPROVAL OF HOUSING GOALS

Mayor Stephen May will introduce a resolution at Tuesday's City Council meeting strongly endorsing recommendations of the housing report prepared for the Metropolitan Housing Committee by the Center for Governmental and Community Research and urging all levels of local government in Monroe County to participate in solving the current housing crisis.

The Mayor noted that City Council approval of his resolution will help carry out the report's recommendation that the "Rochester City Council and the Monroe County Legislature and town and village boards formally express public support for adoption of the 1970's

EXHIBIT O

as the decade during which decent housing in a suitable living environment will be provided to meet the needs of every individual and family in the Rochester-Monroe County area." May's resolution also notes that the report further recommends that "specific production goals be set in Monroe County for low and moderate income housing which will reach an annual average for the next seven years of approximately 2700 new housing units in the City of Rochester and 4700 new housing units in the town of Monroe County."

The Mayor emphasized that the city administration is more than meeting the recommended city goal through a greatly accelerated housing program which will result in 4,000 housing starts in the City in 1971. This is more than the total

for any year in the city's history and close to the combined total for the decade of the 1960's, May said.

"Although the city is making an expensive and massive effort to deal with the pressing housing needs of low and middle-income families, senior citizens and the handicapped through subsidized units, there has never been a unit of subsidized housing built in the suburbs of Monroe County," he emphasized. May strongly urged that the leadership exhibited by the City of Rochester, in meeting human needs of such a vast magnitude, be followed immediately by a comparable exercise of responsibility by the Monroe County Legislature and the towns and villages of Monroe County.

The report, entitled "Housing in Monroe County," stems from actions of the

City Council and the former Monroe County Board of Supervisors which authorized the City and County Managers to appoint a Metropolitan Housing Committee. The Committee, appointed in 1967 and chaired by Joseph C. Wilson, conducted a comprehensive research program, employing the Center for Governmental and Community Research, which, in its report analyzed various components of the housing crisis in the Rochester Metropolitan area and emphasized that there must be a choice of suitable living quarters for persons of all income levels throughout Monroe County.

EXHIBIT P

Councilman May

By Council May-----RESOLUTION ENDORSING REPORT OF ROCHESTER CENTER FOR GOVERNMENTAL AND COMMUNITY RESEARCH, ENTITLED"HOUSING IN MONROE COUNTY, N.Y.,"

WHEREAS, the Rochester City Council and the former Monroe County Board of Supervisors recognized the need for an effective metropolitan housing policy and, pursuant to such recognition, authorized the appointment of the Metropolitan Housing Committee by the City and County Managers in 1967, and

WHEREAS, this committee was charged with inquiring into metropolitan Rochester's housing needs for the period 1967-76; special housing problems of minority groups, the elderly and the handicapped; proposed sites for new housing developments for the period 1967-76;

EXHIBIT P

and problems of financing, taxation and construction of required new housing, particularly for those with low and moderate incomes, and

WHEREAS, the Metropolitan Housing Committee, chaired by Joseph C. Wilson, conducted a comprehensive research program, employing the Rochester Center for Governmental and Community Research which, in a report made public in April, 1970, analyzed various components of the housing problem in the Rochester metropolitan area, and

WHEREAS, this report recommends that "As a part of its housing philosophy the community should accept decent housing as the right of every citizen, and further the attainment of this right should be accepted as a concern and responsibility of government aided

and supported by the private sector,"
and

WHEREAS, this report recommends that the "Rochester City Council and the Monroe County Legislature and town and village boards formally express public support for adoption of the 1970's as the decade during which decent housing in a suitable living environment will be provided to meet the needs of every individual and family in the Rochester-Monroe County area,"
and

WHEREAS, this report recommends "specific production goals be set in Monroe County for low and moderate income housing which will reach an annual average for the next seven years of approximately 2700 new housing units in the City of Rochester and 4700

new housing units in the towns of Monroe County," and

WHEREAS, this report recommends the creation of a Metropolitan Housing Council to coordinate and expedite the work of non-profit housing groups in this area, and

WHEREAS, the City of Rochester is demonstrating its commitment to the goals cited in this report by a program of greatly increased housing starts in 1970 and thereafter, particularly for low and middle-income families, senior citizens and the handicapped,

NOW, THEREFORE BE IT RESOLVED that the Council of the City of Rochester hereby commends those responsible for preparing "Housing in Monroe County, N.Y.", pledges its continuing efforts to meet the report's objectives, and urges other

EXHIBIT P

local government bodies, including the Monroe County Legislature, to endorse the report and participate in its implementation, and be it further

RESOLVED, that copies of this resolution be forwarded to the Monroe County Legislature and all town and village boards in Monroe County.

EXHIBIT Q

METRO-ACT PROPOSAL TO THE PENFIELD TOWN BOARD

Since the release of the Wilson Report on Housing (prepared by the Rochester Center for Governmental & Community Research in 1970) the need for and ability of the suburbs to assume its share of low and moderate income housing became more evident than ever.

However, the lack of response by the towns of Monroe County led the Metro-Act Housing Task Force to initiate an investigation into the zoning ordinances and practices of the towns. All of them are to a greater or lesser degree discriminatory and unduly restrictive and Penfield's ordinance and practices ranked among the most restrictive.

EXHIBIT Q

The apparent solution to the housing problem, a problem listed as having highest priority in the Community Chest Cresap study, lies in the willingness of the suburbs to change their zoning ordinances and assume their proportion of needed housing. Failing this, a challenge in the courts may be necessary to force the town leaders to do what they refuse to do voluntarily.

Our recommendations cover areas of density restrictions, lot size and floor space requirements.

More specifically we propose the following as necessary changes:

1) Zoning of 10% of the total land area of the town (approximately 2,500 acres) for housing below the $20,000 market value range.

EXHIBIT Q

A-- Part of this for areas now receiving services; part for areas not now receiving services

B--This means that the areas will have to have requirements of no more than 7,000 sq.' lot size. Allowance will have to be made for five single family units per acre.

C-- It is understood that this type of zone will be dispersed adequately throughout the town.

2) Amendment of the PUD ordinance.

We propose a policy of the whole town being open to PUD zoning, with certain areas being stipulated as primarily for PUDs, especially in east Penfield.

Forty percent of the units of a PUD should be allowed for low/moderate income

units. The developer, in his program application, should be required to meet this criterion and guarantee price levels on the sale of property.

3) Town House Requirements

We believe that the present specifications and density limitations for town houses are unduly stringent.

We propose that this portion of the ordinance be rewritten on a health oriented basis and that other arbitrary specifications, such as floor space, be omitted. A requirement of 700 sq.' may be reasonable but not beyond that.

4) Multiple Residence

Unit per acre limitations should be raised to eighteen, with a requirement that buildings not cover more than 30% of the total lot size.

Furthermore of the apartments 25% should be able to be rented for under $150.00 per month and 25% should be able to be rented for under $185.00.

-end-

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	*	AFFIDAVIT
	*	Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF STEUBEN) SS:
TOWN OF WAYLAND)

ANDALINO ORTIZ, being duly sworn, according to law, deposes and says:

1. I am a private citizen residing in the Town of Springwater, New York; my mailing address is Rural Delivery 1, Wright's Road, Box 202, Wayland, New York. I am one of the plaintiffs in the above noted action, bringing this action on my own behalf and on behalf of all persons similarly situated. My claim is that I, as a property owner of the City of Rochester, am forced to pay a greater

proportionate share of real estate taxes to the City of Rochester than other residents of the City of Rochester area to their respective towns because the City of Rochester has and must continue to build more than its fair share of tax abated housing projects within the territorial limits of the City of Rochester to meet low and moderate income housing requirements of the Rochester metropolitan area - all by reason of the exclusionary practices of the defendants. Additionally, my claim is that I, as a citizen of Spanish/Puerto Rican extraction am being denied the right and/or opportunity to reside in the Town of Penfield because of my race - all due to the illegal, unconstitutional and exclusionary practices

of the Town of Penfield which have the effect of excluding persons of Spanish/ Puerto Rican extraction from renting, buying and/or living in the Town of Penfield by reason of **there** being allowed no low, moderate income housing. By virtue of the illegal, unconstitutional and exclusionary practices of the Town of Penfield, all of which have had the effect of preventing me from living near work in the Town of Penfield. I have been put to great expense of time and money in commuting to employment in the Town of Penfield. I make this affidavit in opposition to the defendants' motion herein to dismiss my complaint.

2. I was born in Puerto Rico in 1925; I came to the mainland, United States in 1947. I married my wife, Maria,

in Pennsylvania in 1948. We have seven children, Zarchairah, age 22, Rebecca, age 19, Juan, age 18, Andalino, Jr., age 17, Marielena, age 15, Christopher, age 12, and Christina, age 10. I came to Rochester with my wife and family in 1966. All of our children with the exception of Zarchairah, still live with my wife and myself.

3. When coming to Rochester in 1966, my wife and I sought a place to live which would be within reasonable distance of my job and which would provide an environment where we could live and bring up our children, giving them the best education available in public schools, the maximum opportunity to share in cultural events of the community, use the public libraries, public parks, etc.

4. My job on coming to Rochester and continuing until May, 1972, was as a janitor at St. Joseph's, Gebard Road, Penfield, New York. My gross salary per week was $130.00; net $102.00 per week; gross annual income, $6,760.00. On our first arriving in Rochester, my wife, Maria, also worked part time as a domestic; she averaged about two days work a week at $12.00 a day. Figuring that we could afford to spend about one-fourth of our monthly income on providing for our housing needs, our family could afford to pay $126.00 a month to supply housing for us when we first came to Rochester.

5. I found that housing in my price range, low and moderate income housing, was impossible to find in the Rochester metropolitan area except in the center city of the city of Rochester.

We had no choice in housing but to settle for renting of housing in the decaying section of Rochester's center city. That rented housing was inadequate in terms of space for my family and environment but it was the only choice in housing that a person of my minority and low income status had.

6. In 1967, my wife Maria secured more steady employment at St. Joseph's, Gerard Road, Penfield, New York. She had an income of $80.00 per week gross and a net income of $65.00 a week. Thereafter my wife Maria secured full time employment as an interpreter for the health clinic at the University of Rochester in Rochester, New York. She now has a gross income of $119.00 per week; net income of $94.50 a week; a total of $6,188.00 gross income a year. I am

presently unemployed.

7. I found renting a home in Rochester center city to be most unsatisfactory. For example, one of the places where our family first resided on Central Park was in terrible condition and entirely inadequate for my family. There were one inch spaces around the windows causing the place to be continually drafty and almost impossible to heat in the winter. There was water standing in the cellar. The toilet was broken. The house was infested with roaches. There were only three bedrooms for nine people.

8. With both myself and my wife working either full time or part time, we immediately began to save our money and look for a house that we might be able to afford buying. Again our

search was necessarily concentrated in the Rochester center city since there was no housing on the market anywhere in the Rochester metropolitan area which we could afford on our low income budget. We finally save $500.00 which was enough for a down payment on a house at 5 Evergreen Street,Rochester, New York. The selling price of the house was $10,000.00 and we obligated ourselves on a mortgage of $9,500.00.

9. Even though we now had our own home in Rochester center city, I was still dissatisfied to have my children growing up in a decaying center city, "ghetto" environment. In order to break free of the environment of living and rearing my children in the decaying inner city, I began to explore the possibilities of moving my family to one

of the surrounding towns in the Rochester metropolitan area. Since my job at that time and continuing until May of 1972 was in the Town of Penfield, I initiated inquiries about renting and/or buying a home in the Town of Penfield. However, because of my income being low or moderate, I found that there were no apartment units large enough to house my family of wife and seven children, nor were there apartment units that were available reasonably priced so that I could even afford to rent the largest apartment unit. I have been reading ads in the Rochester metropolitan newspapers since coming to Rochester in 1966 and during that time and to the present time, I have not located either rental housing or housing to buy in Penfield. Accord-

ing to information recently assembled by Metro-Act of Rochester and which I have seen, a three bedroom house in the Town of Penfield rents for a minimum of $250.00 a month; the tenant then has to pay additional for all utilities. According to this information a three bedroom apartment in the Town of Penfield now rents for $300.00 a month plus electricity; it is virtually impossible to find a three bedroom house in the Town of Penfield for less than $30,000.00. Thus my efforts to locate either rental or purchased housing in the Town of Penfield was unsuccessful because of either the generally inadequate space in most rental units or the impossible high rents of the few rental units with enough space and/or the impossibly high

cost of buying and/or renting a home in Penfield. (A summary of rental information in the Town of Penfield is attached hereto and made a part hereof as Exhibit A.)

10. Finally, in 1968 I located a dilapidated home outside of Wayland, New York, (Town of Springwater). The selling price of the house was $9,500.00. I paid $4,000.00 and obligated myself on a mortgage of $5,500.00 to the First National Bank of Wayland for seven years. Because the house was in such poor condition, (the house was uninhabitable when I bought it), I immediately needed to obligate myself for a home improvement loan of $1,500.00 to the First National Bank of Wayland and another home improvement loan for $1,400.00 to

Beneficial Finance. The house in Wayland had been unoccupied for some time except for one room. Over a period of time, I worked on the house so that it became habitable. I replaced the roof; I put in all new window glass; I replaced all the walls either with dry wall or put paneling on the existing walls; I redid all the ceilings by putting in lowered ceilings. I installed wiring to the upstairs of the house where there had been no wiring.

11. After making all of these major repairs, the house was habitable for my family year round and in 1971 we moved to **the house outside Wayland.** Since 1971, we have rented our house in Rochester at 5 Evergreen Street. The rent I receive from the house in

Rochester is just enough to defray the mortgage and other expenses on the house.

12. The house on Wright's Road outside Wayland, New York (Town of Springwater), is a frame house consisting of ten rooms - six bedrooms, a kitchen, a dining room, a living room and a family room. The expenses for living in my house outside Wayland, New York (Town of Springwater), include the following:

1. Monthly mortgage payment to First National Bank of Wayland, $83.69 per month.

2. Monthly payment on home improvement loan to First National Bank of Wayland, New York, $59.88.

3. Monthly payment on home improvement loan to Beneficial Finance - $41.00.

4. Insurance on house - $12.00

per month ($144.00 per year).

5. Property taxes - $24.00 per month ($288.00 per year).

6. Heat - $33.33 per month ($415.00 per year).

7. Electricity - $32.00 per month ($386.00 per year).

There is a well on the property from which we get water.

13. Since I was unable to locate housing near my work in the Town of Penfield (employment dating from my arriving in Rochester in 1966 to May 1972) I have been forced by reason of the exclusionary practices of the Town of Penfield to reside in Wayland, New York, Town of Springwater (1971 through May 1972) forty-two miles from my work in Penfield. I worked five days a week, eight hours a day at St. Joseph's. I

was at work by 7:30 in the morning. Travel one way to the job in Penfield took at least one hour and ten minutes one way - in bad weather the time involved one way to work was about two hours. The maximum distance from my job if I had been able to live in the Town of Penfield would have involved driving time of no more than twenty minutes to the job at St. Joseph's.

14. I use a 1966 Chevrolet car to commute to work or, occasionally, a pick up truck. The car or truck consume gasoline at a rate of thirteen miles per gallon; thus, every day my transportation to and from work in Penfield required 6.5 gallons of gasoline - gasoline which cost me 39¢ to 43¢ a gallon. This means that

there was at least $2.56 involved each day in gasoline costs for my automobile or $12.80 involved in gasoline costs alone for my automobile to and from my work each week. Thus, in costs of gasoline alone, commuting to and from the job in Penfield has cost me $666.00 per year.

15. For my tax dollar in the Town of Springwater, to the best of my information, I am provided with very little service. On the basis of information assembled and called to my attention by Metro Act of Rochester, Inc., the following is a brief outline of the services available to me and my family in my community:

A. My six children who live with me attend Wayland Central School which is a twenty mile bus ride from

our home. I have two children in the twelfth grade, one child in the tenth grade, one child in the ninth grade, one child in the fourth grade and one child in the fifth grade. The Wayland Central School consists of one building which houses kindergarten through high school and includes a swimming pool and three gyms (two gyms for elementary level; one gym for high school level), an auditorium, two lunch rooms (one for elementary level; one for secondary level).

The faculty of Wayland Central School numbers one hundred with three administrators; there are one thousand students in grades kindergarten through six and seven hundred students in grades seven through twelve. Average class size at the elementary level is 28 through 30 with one slow section of

20 pupils. In the secondary level, average class size is 25 to 30 with a slow section of 18-20 pupils. Teacher/ pupil ratio at the secondary level is 110 students per teacher.

The schools offers special services of a psychologist one day a week. An assistant or an intern is available five days per week through the BOCES program of Livingston and Steuben Counties. There are two guidance teachers, two special reading teachers.

Curriculum of the school at the elementary level is a standard curriculum including music and art. There are no languages, however, taught in the elementary grades. Curriculum in grades seven through twelve is a standard curriculum with home making,

agriculture and industrial arts also offered. French, German and Latin are offered in grades nine through twelve. All persons are required to take regents exams; there is no non-regents program offered.

Activities offered by this school system at the elementary level include band and chorus. At the secondary level there are two bands, a chorus, a library club, a future teachers club, a future business leaders club, future home makers, Latin club, newspaper, year-book, art club and drama group. At the elementary level, there is fifth and sixth grade intramural baseball and track. At the secondary level, there are all sports except football - including baseball, soccer, track, wrestling, tennis, golf, skiing, swimming.

B. The Town of Springwater provides no garbage or trash collection service for the residents. A private company is available for contract at the cost of 75¢ per week, one pickup per week. Highways are maintained in the Town of Springwater on a budget of $32,400.00 for maintenance, $45,837.00 for machinery and new equipment and $42,000.00 for snow removal. The Town of Springwater budget for its volunteer fire department (department composed of twenty to thirty men who are active), was $9,350.00 for 1971. There is one fire station. There is one volunteer ambulance service available to residents of Spring-water seven days a week, which is financed by private contributions.

C. The Town of Springwater recreation budget is $600.00 per year.

The town sponsors fall, winter and spring roller skating for all ages, once a week, and a boys' basketball program once a week. There is no summer recreation program and no adult recreation program. The closest public library for the use of my family (outside of the Wayland Central School library, which my children use) is the Wayland village library. Wayland is located about five or six miles from where we live. The library is open twenty hours per week and is financed $1,000 per year from the town, $1,100.00 a year from the village,and $1,350.00 from Community Chest and $1,020.00 from miscellaneous income. The library belongs to the Southern Tier Library System. There are records in addition to books for loan. There are no films

available nor are there special programs provided by the library. The village of Wayland also has a recreation program on a budget of approximately $2,000.00 per year. There is a summer playground program for ages six to fifteen as well as a swimming program. There are no adult programs. There is no youth center nor senior citizen program.

16. However, if I were not excluded from residing in the Town of Penfield by reason of the exclusionary practices of the defendants, I understand, based on information related to me by residents of the Town of Penfield and Metro Act members, that I would be able to take advantage of the Penfield Public School system which offers services as follows:

A. There are six elementary schools, two junior high schools and one senior high school in the Penfield Central School system. The average class size, grades one through six is 26 students to one teacher. The class sizes vary at the junior and senior high level depending on the course.

B. The Penfield Central School District offers the following special services. The district employs one full time speech teacher, one social worker, two psychologists and three counselors for the elementary levels. In the secondary schools there are nine full time counselors. There is one full time physician. The district has additional mental health services which include three consulting physicians, two of whom are on the staff of the depart-

ment of pediatrics of the University of Rochester Medical School. These services are paid for by the school district.

C. The Penfield Central School District offers the following reading services. There are four special reading teachers for the district plus one school tutor who is paid by the hour to work with youngsters who have very special, individual needs. There is a reading resource center at one of the elementary schools.

D. The Penfield Central School District offers special education. Students with perceptual handicaps and various learning disorders attend special programs at BOCES - a central school for these services supported by the districts in the county. There are specialized teachers and programing

designed for these youngsters. (A plan is being developed over the next five years for the return of many of the special education students to Penfield so that these students may attend regular classes and the district will provide special resource people to aid the children.)

17. I am informed that students in the Penfield school system, according to tests, appear to be doing better than comparable youngsters in inner city and other county schools. For example: reading of a third grade student - percentage of students reading below minimum competency - Penfield, 14%, State, 27%, Monroe County, 22%, City, 23%. Third grade math - percentage below minimum competency- Penfield, 7%, State, 21%, County, 18%. Reading, sixth grade, percentage of students below minimum competency - Penfield ,10%, State, 30%, County, 22%. Sixth grade math - percentage below minimum competency - Penfield, 12%, State, 33%, County, 26%.

I understand that in Penfield, the per-pupil cost from non-Federal funds ending June, 1971 was $1,487.49. Eighty percent (80%) of Penfield youngsters go on to higher education versus 20% from the city.

18. According to my information, the curriculum in the Penfield Central School District includes basic skill program for slow learning students, grades 4 through 12. An honors program is maintained for students who wish to accelerate learning. A regents program is designed for academic orientation and students who want to attend college.

There is a non-regents program for the non-college bound. Seniors are offered advanced placement courses approved by colleges for possible credit toward a college degree. A vocational program is available in addition to regular classes at the high school level. Additionally, there is a music program consisting of general music for grades 1 through 8 in every school. There is a Suyuki violin program offered in every elementary school. Instrumental instruction and music theory is offered at the high school level.

A. General art classes are offered for grades 1 through 8 in every school. An elective art program which offers a wide range from pottery to mechanical drawing is available in grades 9 through 12.

B. Business education is offered to students in grades 9 through 12. There are a wide variety of courses offered including such courses as typing, bookkeeping, etc.

C. Distributive education courses are available in grades 10 through 12. Students majoring in retailing have classes at school combined with partial employment for pay and credit. This program is coordinated by the school with preparation and evaluation.

D. Home economics is available from grades 7 through 12. There is a wide range of courses from developing work skills to functioning in a household and partnership.

E. A comprehensive industrial arts program is available in grades 7

through 12. Penfield Central School staff is involved in research during their paid summer working hours to develop a curriculum of courses directly related to daily living. Such courses would include technical chemistry, life science and essentials of math.

19. I understand that Penfield schools offer athletic programs including physical education programs for grades 1 through 12. There is a plan to extend this physical education program to kindergarten youngsters. An intramural program for elementary and junior high is operated by the school system for students on after school hours. In the high school, there is a fall and spring interscholastic program. Interschool competition for girls who excel in intramurals consists of six programs.

There are also interscholastic programs for girls, competition in gymnastics, grades 9 through 12. In the fall, girls have soccer and field hockey; in the winter, basketball and volleyball and in the spring, swimming and softball.

20. I understand that boys have interscholastic competition provided in grades 7 through 9 on a modified sports program for soccer, football, basketball and cross country. In grades 9 through 12, boys have available interscholastic competition in soccer, football, cross country, basketball, swimming, wrestling, ice hockey, skiing, track, tennis, baseball and golf.

21. According to my information, the Town of Penfield provides recreation services to residents of the Town of Penfield. Those services include

programs during the summer of 1) playground program (7 weeks - 5¢ to 25¢ charge for arts and crafts) for children of different ages, 2) tennis lessons ($1.00 for all lessons), 3) women's tennis, 4) swimming lessons for children, 5) swimming lessons for adults, 6) softball leagus. Fall and winter sports - 1) boys' basketball ($1.00 registration), 2) gymnastics - elementary and junior high years, 3) basketball program for high school boys and young adults. Services to senior citizens, recreational activities, referral services and crafts, arts, and film programs that are available through the Penfield recreation department.

22. I understand that the Town of Penfield maintains one park, Harris Whaler Town Park; there is a skating rink in this

park and plans for development include tennis courts, baseball diamonds, playgrounds and picnic areas.

23. I understand that the Town of Penfield recreation department sponsors a Penfield community orchestra which meets throughout the year and gives free concerts to the community periodically. Additionally, the recreation department sponsors the Penfield Players which is a group which performs plays in the community at public performances. Admission is charged for performances, but anyone interested in joining may join the Penfield Players. The 1972 Parks and Recreation budget for the Town of Penfield was $60,277.00.

24. According to my information, the Penfield Free Library is a member of the Monroe County Library System and shares

in all services - loaning books, records, films - and in the training of librarians. It was established by an organization of private individuals and is maintained and controlled by an organization of private individuals for the free use of the public. In 1970, the Penfield Free Library had an inventory of 33,152 volumes, 151 periodicals, 1,068 recordings and 60 large print books. It provides special (free) programs for the community; film programs for adults; weekly story hour for pre-school children; Lunch 'n Listen book reviews for adults. The library is open 7 days a week from 10:00 A.M. to 12:00 noon on Mondays, Tuesdays, Thursdays and Fridays;from 2:00 P.M. to 9:00 P.M. on Mondays, Thursdays, and Fridays; on Saturday from 2:00 P.M. to 5:00 P.M. and on Sundays from 1:00 P.M.

to 5:00 P.M. The Town of Penfield's 1972 budget for the library is $70,816.00.

25. I understand that the Town of Penfield is served by volunteer firemen. Volunteers are well trained and the best in fire fighting equipment is available. Residents of the Town of Penfield have some of the lowest fire insurance rates of any town in the county. Each property owner is assessed for support of the Fire Department in the fire district where they live $1.55 per $1,000.00 assessed valuation. The department operates one fire station and is seeking voter approval for an additional station.

26. According to my information, the volunteer ambulance service in the Town of Penfield serves the entire town 24 hours a day including holidays except

from 6:00 A.M. to 5:00 P.M. on Monday and 6:00 A.M. to 9:00 A.M. on Tuesday.

27. Upon information and belief, garbage and trash collection in the Town of Penfield is provided to residents by two private firms. Monroe Disposal makes one collection per week and the cost to residents is $5.35 including tax per month. Youngblood and Smith Disposal Systems makes one collection per week and cost to residents is $13.91 every three months including tax. In addition, Youngblood and Smith Disposal Systems offers free recycling service to regular customers and operates, for free, the town's recycling center. The Penfield Highway Department provides an annual free spring pick-up service for hard to dispose of items. Cost to the Town of

Penfield - approximately $25,000.00 annually.

28. Upon information and belief, The Town of Penfield highway department employs 22 persons. The department is responsible for ice and snow removal on state, county and town roads in the winter. It is also responsible for road maintenance on county and town roads in the summer. The department is equiped with the most modern equipment for snow and ice control, road building, and maintenance. The 1972 budget for the Penfield Highway Department is: total highway - $584,433.08, road building, repair - $173,000.00, machinery repair - $115,000.00, snow removal and miscellaneous $295,000.00. There are 71.53 miles of town highways, 25.05 miles of state high-

ways, 35.33 miles of county highways in the Town of Penfield.

29. I find that living in the Town of Springwater, access to stores is limited and my shopping opportunities are thereby limited. We need to go either to Dansville or Wayland - each about five or six miles away. In Dansville there are three food stores and a few clothing and food stores. However, my wife tries to concentrate her buying in Rochester because she thinks that prices are cheaper there. On the basis of information supplied to me by Metro Act of Rochester, Inc., I understand that the Town of Penfield has two large shopping plazas - Panorama and Eastway; the latter shopping plaza includes a branch of Sibley's department stores.

Additionally, there are quite a number of other smaller shopping areas in Penfield which include food markets, drug stores, dry cleaning businesses.

30. My wife and I have always considered it desirable that our children have summer jobs. While we lived with them in the city, our girls were able to secure jobs such as nurses aides; the boys were able to find handymen jobs in the summers. However, since we have been living in the Town of Springwater, our children have not been able to find any summer employment. There is practically no industry in Springwater and there are only a couple of stores. According to information furnished me by Metro Act of Rochester, Inc., if we were to be living in the Town of Penfield, there would be

summer employment available for our children. I understand that the Youth Council in Penfield runs an employment center. There is employment for paper boys, mowing of lawns, babysitting and packaging and carrying out groceries.

31. The plight of myself and my family in being a member of a minority and of low income is shared by many other persons. I understand that there are approximately 18,000 persons of Puerto Rican/Spanish extraction or 19,500 Latins living in the Rochester area. Practically all of those are now living in Rochester center city - just as I and my family were prior to our moving to the Town of Springwater to escape the decaying inner city environment. These persons, like myself and my family,

are continually harmed in a very real and tangible fashion by the effect of the exclusionary practices of the Town of Penfield. Because our living environments are dictated by laws, practices and policies which prevent us from living where we might wish, we are forced, for example, to accept as a way of life poor schools for our children, reduced job opportunities, inferior community services and added expenses of reaching employment.

/s/ Andelino Ortiz
ANDELINO ORTIZ

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Printing

EXHIBIT A

PENFIELD

APARTMENT PROJECTS AND TOWN HOUSES

Project	Rentals			
	Studio	1BR	2BR	3 BR
*Penfield Village 6 units at 165 6 " at 190		165-180	190-210	
*Penfield White Oaks		175	195	
*Pennwood		184.50	195	
*Skyline	155-175	175-190	210-225	
*Penfield Park T.H. 105 units			260	300
*Brook Hill		190	225-275	
*Lost Mountain Manor		235-245	285-295	
Mountain Lane		190	225	
* *Creek Hill		165(175)	190(195)	

EXHIBIT A

Project	Rentals			
	Studio	1BR	2BR	3BR
*Eastway Manor		193	220	
*Liberty Manor (1963)	125 6 units	135-145 18 units		
*Avalon		177	188	

* Includes unilities except electricity

** Rentals increasing to $175 and $195 effective 6/72

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Windson-Square T.H. for sale	2BR	3BR	4BR
	28,950-30,000	31,000 36,000	36,000

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	*	AFFIDAVIT Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

CLARA BROADNAX, duly sworn, according to law, deposes and says:

1. I am a private citizen residing at 87 Jefferson Street, Rochester, New York. I am a person of the black race. I am one of the plaintiffs in the above noted lawsuit; I make this affidavit in opposition to the motion of the defendants to dismiss my complaint on the ground that I have no standing to sue the Town of Penfield for what I believe to be

practices, policies and customs of excluding persons of my race from living in the Town of Penfield. As I outline more particularly in the succeeding paragraphs in this affidavit, I believe that the policies of the Town of Penfield to maintain a zoning ordinance so as to prevent the construction of any housing in Penfield except expensive housing for middle and high income persons, the Town of Penfield's affirmative action to prevent amendments to and variances from their ordinances which would allow the construction of low and moderate income housing for example, directly affect my rights guaranteed to me under the United States Constitution, the laws of the United States and the laws of the State of New York, guaranteeing to me, among other rights, my right to travel,

my right to associate with other persons, my right to live in an integrated environment, my right to send my children to integrated schools, my right to decent housing, my right to make contracts, etc.

2. I was born in Rochester, New York but shortly after birth moved to Caledonia, New York where I grew up. In 1968, I came back to Rochester to enroll in a Concentrated Employment Program, find a job and live.

3. Since Concentrated Employment Program paid me only $30.00 a week, it was necessary for me to receive financial assistance from Monroe County Social Welfare Department - besides myself there are six children, Dale Renee, 12, Curtis Eugene, 11, Hiram, 7, Jay Scott, 6, Sonja Ann, 4 and Yolanda 2. I am divorced from my husband; I receive no support from him

for me or my children; he no longer resides in the State of New York, according to my information.

4. While the Welfare Department was undertaking to pay the costs of my rent for housing in Rochester, the Welfare Department gave ve no assistance in locating housing on coming to Rochester. I therefore, bought newspapers and read ads and walked to look for apartments until I found the place where I now reside. I found that there was virtually no choice of housing in the Rochester area. The only other choice of a place to rent that I had at the time I needed an apartment was an apartment which was in obviously very bad shape and on which the landlord wanted a rent of $175.00 a month. The apartment that I did rent was in terrible shape but it

had a rent of only $80.00 per month.

5. On locating the apartment, I contacted the Welfare Department for them to screen the apartment to see whether it complied with Welfare's standards for renting. I was first told that the apartment was approved for my renting as a welfare recepient. Once I moved in, however, Welfare Department personnel advised me that the apartment had had numerous housing code violations for four years and it was not an approved apartment. However, since I was already in the apartment and since I could find no other housing, the Welfare Department agreed to pay the rent.

6. The apartment at 87 Jefferson Street is an upstairs apartment in the house at that address. I have five rooms - two bedrooms, a living room, kitchen

and dining room. There is a private landlord.

7. The apartment and house is in deplorable condition - conditions existing from the time I moved in and steadily getting worse in the four years that I have been there. The landlord was cited for many housing violations before I moved in and since I have been living there he has been cited for many more violations but conditions are never really corrected. The situation finally became so bad that I requested a hearing of the Welfare Department at which time I called to their attention in photographs and statements the impossible living conditions in the apartment. I advised the Welfare Department that they would need to take the responsibility of applying money to pay the rent, that I could not

in good conscience take money that the Welfare Department gave me and give it to a landlord as rent for an apartment in such deplorable condition. The Welfare Department, thereafter, has withheld the rent allotment to me and is now withholding rent payments to the landlord. Thus, no one is paying rent on the apartment at the present time because of its uninhabitable conditions.

8. The defects in our apartment include many leaks in the roof, bad wiring, roach infestation, rat and mice infestation, crumbling house foundation, broken front door, broken hot water heater, etc. There are at least six holes in the roof. When it rains, the rain comes down through the ceiling and leaks into the living room and kitchen. The rain leaks so heavily that it follows the

electric wiring and flows from the light fixtures.

9. The wiring in the house is so old and defective that there is some electrical short in the apartment at least every two weeks which requires our resetting fuses. The house foundation is now crumbling very badly. Since the foundation has started crumbling, there have been mice and rats coming into the house. The mice and rat infestation is now so bad that they come through the heating vents into the rooms of the apartment itself. I have already caught two mice in the children's bed. To have rats and mice infesting the house causes great anxiety among the children. One way that I try to reduce the danger of my children getting bitten is to leave the light on in the bedroom all night.

The children are now afraid to go to sleep unless there is a light on in the room.

10 There are so many roaches infesting the house that it is not safe even to allow cereal to remain out on a table; any food left out will be immediately spoiled by roaches crawling over it. About four months ago, the hot water heater for our apartment began leaking. To date, although there has been constant complaint, the landlord has not repaired the hot water heater. Thus, for the past four months, I have not even had hot water in the house for bathing or dish washing purposes.

11. The front door of the apartment is in such poor repair that it does not fit. In the winter, snow constantly blows in around the door. Because the door

does not fit, the apartment is constantly drafty. I pay $31.00 a week for fuel (oil). The drafty condition in the apartment is particularly troublesome for me since my son, Jay Scott, has had a bad asthmatic condition since birth. The house did not have even a heat vent in one room so I changed that room from the children's room to my room so that there would at least be some heat for them. In the winter of 1971, the furnace stopped operating altogether. The fuel company man advised me that the heating unit was producint carbon monoxide because of a repair that needed to be made in the furnace and he said therefore, that it was too dangerous to light the furnace. Although my landlord was called about the problem early in the evening, the intervention of the Rochester Fire Department on my behalf was necessary

before the necessary repairs were made very early the next morning.

12. The outside of the house is dilapidated as well - boards are rotting and there is the constant problem of lead paint chipping from the house. The pealing lead paint chips are a particular concern for me with my young children. Young children eating paint chips and thereby consuming lead, develop serious behavioral problems, brain damange and retardation.

13. Since January, 1970, I have been employed by the City of Rochester School District as a School Plan Advisor to the Neighborhood. I receive a net income every two weeks of $212.00 or a net income of $106.00 a week. Because my income is so low and because I have the full support of myself and my six

children, I receive an additional $35.00 every two weeks from the Monroe County Welfare Department. Because my present housing in Rochester is so inadequate, I only have four of my children living with me in the apartment on Jefferson Avenue. Two of my children, Dale Renee and Curtis Eugene, I have living in Caledonia, New York. (I believe my children are also receiving a better education in Caledonia than they would receive in the Rochester City Schools.) Presently, I have in Rochester, only one bedroom for all of my children and it is just impossible for me to have my two older children here with me. As it is now, I have all of my children, both boys and girls, sleeping in one bedroom. Since they are becoming older, this creates increasing problems for me. Now the girls change in the bath-

room and the boys change in the bedroom. But as they grow older, there is a growing feeling of their living on top of each other, not having any space even to keep their own clothes separately and not having any privacy for themselves.

14. My dilapidated house is located in a decaying part of Rochester inner city. Violent crime is high in the area, police protection is unsatisfactory, there are no parks and community services are poor. Our community is yet haunted by a kidnapping, rape and murder of a young child in our area last summer. We have had six break-ins within
No parent in the neighborhood can feel safe in allowing his/her children to be alone anywhere in the neighborhood after dark. Adults also consider it unsafe to be on the streets after dark.

15. There is a bad traffic problem in our area, as well. My neighbor has a child killed by being hit by a car on the way to school. There have been three children hit in the front of my apartment within the last two years. We have constantly complained for more traffic control and direction but all to no effect.

16. I have been trying for some time now to find some alternative to living in dilapidated housing in a decaying environment. However, because my income is low, $494.00 net per month, including welfare assistance, I have only about $121.00 per month that I can devote to my housing budget for myself and my children. A person with only $121.00 to spend on rent per month, however, can

just not find housing to rent in the Rochester area for that money. I understand that a three bedroom apartment in the Town of Penfield rents for $300.00 per month - far beyond my reach. I would like to find a place with at least four bedrooms. With my children being older, I really do need a bedroom for myself, a bedroom for the boys, a bedroom for my oldest daughter and a bedroom for the other girls. I want to live in an environment where there will be some backyard for my children to play in and where I and my children will have some feeling of privacy - not with everyone living on top of everyone else. I feel that if I could locate a decent house in a decent environment that I could expect that if there were problems, there would

be action on those problems. For example, if I lived in a good neighborhood and called the police, I could expect that the police would come promptly and take prompt action rather than coming belatedly and not expressing any concern about the problem. I would feel that there would be adequate community services such as garbage disposal and prompt attention to problems such as mice, rats or roaches. If I lived in a decent house on a decent street, I feel that I could be comfortable when my children would walk on the streets to and from school and after school. There would be playground space for my children in addition to our own yard.

17. Recently, I have been considering trying to afford to buy a house. I could not possibly afford something more than $11,000.00 and probably should not pay

more than $9,000.00. However, there is certainly housing of that price available nowhere in the Rochester area except in the Rochester center city and that housing is old, decaying and dilapidated; I could expect that there would be much expense of continual repair.

18. I am working for a decent place to live and I don't have it. I am unable to get it. I believe that the Town of Penfield by its zoning laws and policies to exclude construction of low and moderate income housing is depriving me of many rights, including my right to decent housing. There are many people in my situation. I understand that the 1970 census shows that there are 52,218 blacks in the Rochester metropolitan area (Monroe County), 49,647 of those blacks live in Rochester. I

believe that I adequately represent the blacks of the Rochester community who because of their minority and low income status are excluded from an opportunity to live in the Town of Penfield.

/s/ Clara Broadnax

CLARA BROADNAX

Jurat
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In
Printing

THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	*	AFFIDAVIT Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

ANGELA REYES, being duly sworn, according to law, deposes and says:

1. I am a private citizen residing at 128 Alphonse Street, Rochester, New York. I am a person of the Puerto Rican race. I am one of the plaintiffs in the above noted action. This affidavit is made in opposition to the defendant's motion in this lawsuit to dismiss my complaint against defendants on the ground that I have no standing to sue the Town of Penfield

for what I believe to be policies, practices, customs and usages of excluding persons of my race from living in the Town of Penfield. I believe that the policies in the Town of Penfield to maintain a zoning ordinance so as to prevent the construction of any housing in Penfield except expensive housing for middle and high income persons, the Town of Penfield's affirmative actions to prevent variances in their ordinance which would allow the construction of low and moderate income housing, for example, directly affect my rights guaranteed to me under the United States Constitution, the laws of the United States and the laws of the State of New York, guaranteeing to me among other rights, my right to travel, my right to associate with other persons, my right to live in an integrated environ-

ment, my right to send my children to integrated schools, my right to decent housing, my right to make contracts, etc.

2. I have for the past year been employed as a Task Force developer with the Rochester Model Cities program. My gross income per year in this employment is $8,400.00. I have a bi-weekly gross income of $323.00 or a net bi-weekly income of $285.00. My husband, Melbil, is also employed. For the past year he has been working at Rochester Jobs, Inc. His gross annual income is $6,000.00 - a weekly gross income of $115.00 or a weekly net income of $89.00. My husband and I have two children, two boys ages two and three.

3. I was born in Puerto Rico and moved to Rochester with my parents at the age of three years. With my parents

being members of a minority race and with my father coming to this country without means, I have known from childhood the circumstances of being poor and a minority and therefore segregated to living in a community of sub-standard housing and community services in a decaying part of a center city. I was one of seven children; it was necessary at times for my parents to seek welfare payments to supplement our income in order for our rent payments to be made. My vivid recollection of childhood is a series of moves from one house to another in fairly rapid succession - all in the hope that the next house would be better accomodation, provide more space and be more habitable. At one time, our family of seven children and two adults was crowded into a four room unit consisting

of a kitchen, two bedrooms and a living room. All the houses in the center city that we lived in were uniformly old and infested with roaches and rats. My moves with my family during childhood and adolescence included moves from Hand Street to Scio Street from Scio to Woodward Street from Woodward to Scio Street from Scio to another location on Scio Street from Scio to Hartford Street from Hartford to Mudge Place from Mudge Place to Woodward Street from Woodward Street to Ontario Street.

4. Along with the dilapidated housing in the center city to which a family of a minority and low income such as ours was confined, was the lack of adequate police protection and community services in general. An individual would not walk alone or perhaps not at all

after dark in the Scio Street area. A parent would never, even during the day, allow his/her children outside to play alone in this area. When we were living on Woodward Street, we were robbed of our television and record player. The area is reputed for the high incidents of violent crimes and is now an area for large drug traffic.

5. Moving to our house where we presently reside at 128 Alphonse Street, Rochester, New York, was the culmination of my husband and my shopping around the entire Rochester area to locate a house which we could afford to buy. We began this search by contacting a real estate broker and finally securing the help and interest of one real estate broker. Our net disposable income being $924.00 per month between both my husband and myself

we can afford approximately $231.00 per month for housing. The price range of house, therefore, that we could consider, would be a house not to exceed $20,000.00 in price.

6. Because my husband and I were interested in not only buying a house of our own but also in so buying to place ourselves and our children in an environment which would provide adequate community services,police protection and expecially, good public schools, our investigation for housing included the Rochester bedroom communities of Webster, Irondequoit, Penfield and Perinton. Our search over a period of two years led us to no possible purchase in any of these towns. In the Town of Webster, properties ran $25,000.00 and up, $5,000.00 beyond our budget. In the Town of Irondequoit, the properties

were above $20,000.00 and were properties on large lots which had very high taxes. In the Town of Perinton, properties began no lower than $23,000.00 and taxes anounted to another $2,000.00 a year on the house and large lot. In the Town of Penfield, there was no possibility of finding a house costing less than $35,000.00 - far beyond our budget without taking into consideration the high taxes on the house and land.

7. The house we found, 128 Alphonse Street, Rochester, New York, is a house that my husband and I finally located on our own through a contact of my husband at his job. This house is located still in Rochester center city; therefore we have not been able to achieve our goal of changing our atmosphere, environment and outlook, but have at least found a house

that we could afford. The sale price of this house was $13,800.00 including $1,200.00 which we will need to pay the bank for closing costs and down payments. We are now renting the house from Community Savings Bank of Rochester pending papers being cleared for our receiving a mortgage from Community Savings Bank with FHA approval. The house on Alphonse Street is a house which the Metropolitan Rochester Foundation - a non-profit group in Rochester which rehabilitates old houses - bought and completely refurbished and then sold to Community Savings Bank for resale. The house which Metropolitan Rochester Foundation buys are very frequently just shells of houses which have to be completely refurbished in every respect. For example, our house on Alphonse has had a new rood, new gutters, new win-

dows and window sills and sashes, new partitions, lowered ceilings, new kitchen, new water heater and new electrical system installed. There has been new siding put on the outside and the outside has been completely painted. A new driveway has been installed.

8. We now pay Community Savings Bank $149.00 a month rent; as soon as the FHA mortgage is approved we will be paying $149.00 a month plus approximately $36.00 a month taxes and $7.00 a month insurance on the house. Additionally, we will have utility expenses on the house amounting to about $30.00 a month. Thus we will be spending at least $222.00 a month on our house without taking into account the possibility of the yearly upkeep and improvements on this old house.

9. The predicament that I and

my husband have faced in being members of a minority with limited incomes and finding no housing in any of the Rochester suburban communities, including the Town of Penfield, which is available for us to purchase is a predicament that is shared by approximately 18,000 persons who are Puerto Rican or approximately 19,500 persons who are Latin. Because persons in the Puerto-Rican/Latin population are like us, a minority population and of limited incomes, all of us live in the Rochester inner city, either in dilapidated housing like I grew up in or in reconstructed housing like my husband and I now live in.

10. Unless there is action taken to prevent the Rochester suburban communities, like the Town of Penfield, from maintaining the zoning ordinances, practices and

policies, calculated to exclude low and moderate income housing construction, my family will never have the opportunity to select a house in a decent, good environment. The selection of the environment of our housing is particularly important to me since I am very concerned that my children receive the best possible public education. Because I wanted to take advantage of what I considered to be superior schools systems - superior school systems to the public school systems of the City of Rochester - in the suburban towns, my husband and I made a long fruitless effort to locate our house in one of the towns adjacent to Rochester.

11. I believe, therefore, that the practices of the Town of Penfield which exclude the construction of low,

moderate income housing have directly affected me adversely and have deprived me of many opportunities and rights to which I am guaranteed and entitled. I believe that I adequately represent, furthermore, a large number of Puerto Ricans of limited income who by virtue of these same practices and policies of the Town of Penfield have no real choice in housing.

/s/ Angela Reyes
ANGELA REYES

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THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

Title Omitted In Printing *

AFFIDAVIT

CIVIL ACTION
No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

ROSA SINKLER, being duly sworn, according to law, deposes and says:

1. I am a private citizen residing at Apartment 7-F, 10 Vienna Street, Rochester, New York. I am a person of the black race. I am one of the plaintiffs in the above noted action and make this affidavit in opposition to the motion of the defendants herein to dismiss my complaint against the defendants on the ground that I have

no standing to sue the Town of Penfield for what I believe to be policies, practices, customs and usages of excluding persons of my race from living in the Town of Penfield. I believe that the policies of the Town of Penfield to maintain a zoning ordinance so as to prevent the construction of any housing in Penfield except expensive housing for middle and high income persons, the Town of Penfield's affirmative actions to prevent variances in their ordinance which would allow the construction of low and moderate income housing, for example, directly affect my rights guaranteed to me under the United States Constitution, the laws of the United States and the laws of the State of New York guaranteeing to me, among other rights, my right to travel, my right to associate with other persons, my right to live in an integrated environment,

my right to send my children to integrated schools, my right to decent housing, my right to make contracts, etc.

2. I am employed as a legal secretary by Monroe County Legal Assistance Corporation, 628 Clinton Avenue North, Rochester, New York. My gross annual income for this past year was $5,981.00; this is paid every two weeks, gross amount $235.00, net amount $198.94. I have three children, ages three, four and seven - the oldest being a boy and the youngest two, girls. Because my income is so limited and because I am the sole support of myself and my minor children (I am separated from my husband; I believe that he is unemployed), I am eligible and do receive benefits from the Monroe County Welfare Department. Monroe County Welfare pays $101.00 a month for my public housing apartment unit in Hanover Houses.

This is a special rate on the rent of this apartment for a welfare recipient, such as myself. Additionally, I receive a payment of $45.00 every two weeks from the Welfare Department to help defray other living expenses for myself and my family. I receive medicare benefits and food stamps.

3. Counting the bi-weekly extra payment from welfare in addition to my bi-weekly salary, I have disposable income of $480.00 per month. Allowing one-fourth of that income to defray housing costs for myself and my minor children, I would have $120.00 a month of income which could be available for supplying my housing needs. Because of my low income, locating decent and adequate housing in the metropolitan Rochester community has always been a particular problem for me.

4. I was born in Rochester in 1946. My parents came to Rochester, my mother from Memphis, Tennessee and my father from Arkansas, approximately twenty-eight years ago. Because of our race, our low income status and the lack and availability of adequate, decent housing in the Rochester metropolitan community, I have always lived in the sub-standard housing of black ghettos in the Rochester center city. I first lived at 25 Daden Street in Rochester, New York with my parents. The house had no central heating but only a space heater on the first floor. Next my family moved to 31 Thomas Street, Rochester, New York. The house was in such a state of disrepair that there was a column in the basement which supported an obviously sloping livingroom floor. Gutter rats ran in and outside of the house and the premises was

roach infested. Thereafter, I lived by myself at 23 Loomis Street, Rochester, New York. Because I got married and started having a family and needed more space, I had to find other housing. I moved to 79 Sellinger Street, Rochester, New York. I had a two bedroom second floor apartment which I rented from a private landlord for $75.00 a month plus utilities. The apartment was in deplorable condition. It was rat infested and roach infested; the sewers constantly backed up, the roof leaked and the house was also infested with red ants. Because the housing was so deplorable, I applied and finally received a place in Hanover Houses, public housing operated by the Rochester Housing Authority. The house at 79 Sellinger Street, Rochester, New York had been so infested with roaches and ants that my refrigerator and freezer

and other furniture had become infested in their linings with the roaches and ants and I was unable to move any of my furniture or household appliances to my new unit in public housing at 10 Vienna Street.

5. The apartment at 10 Vienna Street is a three bedroom apartment on which I have a month to month written lease. I have lived there for approximately two years. While the public housing authority has recently re-furbished the apartment, installing new kitchen fixtures and putting carpets on the floors, the housing is far from adequate and the environment like living in a jungle. The apartment has such physical defects as exposed radiator pipes which cause burns when touched by small children; the apartment units have no heat control so that the apartment is very hot in the summer and

very cold in winter. Hanover Houses is a multi-storied apartment complex; I now live on the seventh floor; since the elevator regularly does not work in the apartment project, I must walk seven floors to and from my apartment. There is no air-conditioning in the apartment and I have not been able to get action to date from the housing authority on my request for screens in the windows.

6. In addition to the physical defects in the public housing unit, the environment of the apartment project is one of extreme overcrowding of persons into inadequate units in an environment which is one of uncontrolled violence. I am vice-president of our Hanover Houses tenants' association and I am familiar with the problems of our public housing project not only from being a tenant who lives in the project but from being a

tenant who has tried to bring solutions to some of our problems.

7. About 96% of the housing units in the public housing project are occupied by women who reside by themselves with numbers of small children. Children in these apartment units average anywhere from two to nine. Because there are so many units occupied by women alone, attacks on women have been commonplace in the apartment project. Since the summer of 1971, there have been three successful rapes of women in the apartment project. No one has been arrested or accused of any of these rapes and we have been unsuccessful in having local police involve themselves in anything but a minor way in more adequate policing of the area since our project is not a city public housing project. The public housing authority to date has not responded to our requests for

an adequate monitoring and maintenance system to give protection to women tenants. The threat of attack to women is so great that rapes have gone unprevented when an attacker accosts a woman in an elevator or when an attacker waits in a shadow in a hallway while a woman opens her door into her apartment and is then pushed into the apartment by her attacker and raped.

8. Not only is the apartment project located in an area which is high in incidents of violent crimes, the area is also one frequented by dope addicts. Apartment dwellers in Hanover Houses are constantly faced with the prospect that on returning each evening to the apartment, the apartment will have been sacked of all movable, quickly resalable items. Narcotics addicts have in the past stolen master keys to the apartments in Hanover Houses and

and while the residents are away have obtained easy access to the apartment units and have removed such things as television sets, radios, etc. My sister, who also resides at Hanover Houses, had this experience on several occasions. Once she found that thieves had gained access to her apartment and prepared their own meal; another time she found that her humidifier, clock radio and other personal items had been stolen. The addicts then sell these stolen items to other residents of the area, many times other residents of the Hanover Houses apartments. Because the residents of Hanover Houses apartments are all of such a low income level, there is a ready market for stolen valuables; it is not surprising for one tenant to visit another tenant and find that the other tenant has bought items of recently stolen property.

9. Existing alongside of the violence is prevalent prostitution and perversion. My son, now seven years old, recently was accosted by a male pervert in the elevator at Hanover Houses. Because the project is so overcrowded (once one two bedroom apartment was occupied for a period of time by two families), it is impossible for any mother to allow her children outside of the apartment to play. Any child alone with any toy of his own immediately becomes a victim of larger, unsupervised and uncontrolled children, who simply take the toy from the child.

10. Because of the violence of the neighborhood, young children are also unsafe even in going to and from school. My son, my only school age child at the present time, was enrolled in public school in the area for kindergarten and

first grade. I used to send him to school with milk money and some small change. However, he was always mugged on his way to or from school by other larger boys and his small change taken from him. While he was not physically hurt on any of these occasions, he was roughed up so that his pants were practically torn off him on numerous occasions. The situation was such that I had to make special arrangements with his public school teacher to allow him to leave his public school through a different door so he could avoid certain of the worst streets in the neighborhood in returning from school to the apartment house.

11. Because the threat to my son in going to and from school became so great, I decided to try to afford enrolling him in a parochial school;he can go to this

school by taking a bus very near to our apartment project entrance. I really cannot afford to pay the extra costs even though I am given a special rate because of my low income level. At the parochial school tuition is $125.00 a year, plus $20.00 registration fee. I have to pay extra for all his books, pencils, etc. Because my son cannot come home for lunch - I, of course, am away all day working - I need to pay an extra $1.75 a week for a lady at the parochial school to watch my son eat his lunch which I prepare for him every day; the parochial school has no cafeteria. The public schools which my son attended for kindergarten and first grade were so inadequate that he had not even learned his numbers and alphabet after completing the first grade. Last year, I therefore enrolled my son in special tutoring in order for him to catch up with

his parochial school classmates. He now has his subjects at parochial school split between classes on a second and first grade level.

12. There are no play areas for children on the Hanover Houses project or in the neighborhood. A parent cannot let young children outside of the apartment as I previously indicated, without an adult accompanying them. However, even such supervised play outside of the apartment is treacherous. For example, older children in the neighborhood who attend Baden Street Settlement, about 10:00 o'clock each evening break their soda pop bottles around the Hanover Houses project. Each morning the area is littered with soda pop glass. The apartment project personnel attempt to sweep up this glass but inevitably the apartment house project remains strewn with glass.

Last summer, when my son was playing football in the apartment house project grass, he cut his hand on glass in the lawn and had to have three stitches to close the wound.

13. Surviving in an environment such as that of Hanover Houses, presents adjustment problems for the children. My son, for example, prior to moving into the Hanover Houses had been taught not to fight. However, just to get to and from his school in the Hanover Houses area, he had to cultivate a tough, aggressive attitude. Now, however, that he is safe in going to and from parochial school and is relatively secure in the environment of parochial school, he has needed to readjust his attitudes and relationships toward other children. I myself make every effort to be in my apartment in the apartment unit and locked into that apart-

ment unit every evening prior to darkness. I never go outside of my apartment after dark even with my children unless I am going with a group of persons. The only playgrounds that I feel that I can safely take my children to are those where I go when I play in the women's softball league in the evening and where there are numbers of people gathered.

14. I believe that I am entitled to be able to locate adequate, decent housing in an environment which will offer security in performing the routine, ordinary tasks of life, recreation for me and my children and adequate eddcational opportunity for my children. However, there is just no housing to rent in the City of Rochester for a person of my low income. The public housing unit located in the jungle where I now reside has long waiting lists for persons of low income seeking an apartment

unit. In the past I have searched for alternate housing in the Rochester metropolitan area and I am continually alert to other possibilities for housing. However, apartments in the Rochester Metropolitan area of any description begin at a rent of at least $180.00 per month. The limit on a welfare allowance for rent is $150.00 per month.

15. Realistically, after careful search for adequate housing in the Rochester metropolitan area over a six year period, I have found that a black person has no choice of housing in the Rochester metropolitan area. Rather, a black person of my income level is forced by reason of his/her race to live in substandard housing in the center of Rochester. For example, there are no apartments available in the Town of Penfield which a person of my income

level can afford. My budget for housing per month is, as above noted $120.00 per month. I understand that a three bedroom apartment in Penfield rents for $300.00 per month. Since there is not enough housing for low and moderate income persons available, even in the City of Rochester, I and my family are forced to live in Hanover Houses, which is substandard housing.

16. I have sought housing accommodations in the Rochester metropolitan area, including the Town of Penfield - all to no avail because I am a black person of low income. I would like an opportunity to live in the Town of Penfield; I believe I have a right to live in the Town of Penfield and to have access to decent housing in a decent environment.

17. One of the most important

reasons for my desiring to have an opportunity to live with my family in decent housing in a decent environment is my great concern that my children have an adequate education. I have already noted that I found the instruction in the public kindergarten and first grade to be so inadequate that I transferred my child to a parochial school. I understand that the public school in my area, school No.20, has been rated among studies of Rochester City Schools as one of the lowest in terms of effective instruction of students. On the other hand, the Town of Penfields schools rate high in studies which evaluate area schools. The Town of Penfield by its exclusionary policies, practices and laws has and continues, therefore, to cause me real harm by denying me the opportunity to

to reside there.

18. The problem that I have in being a black person of low income and therefore confined for the purposes of selection of housing and environment to "ghetto" conditions in Rochester center city is a problem that is shared by many other persons. The census of 1970 discloses that there are 49,647 blacks residing in Rochester. In the whole of Monroe County there are 52,218 blacks. Penfield, according to the latest census has 60 black residents. I believe that I can adequately represent the black, low income individual in this lawsuit against the Town of Penfield.

/s/ Rosa Sinkler
ROSA SINKLER

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THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	*	AFFIDAVIT CIVIL ACTION No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

ROBERT WARTH, LYNN REICHERT, VICTOR VINKEY and KATHERINE HARRIS, being duly sworn according to law, depose and say:

1. ROBERT WARTH, individually, alleges that he is a private citizen residing at 265 Castlebar Road, Rochester, New York. Along with Gail I.Warth, his wife, he owns the real property at 265 Castlebar Road, Rochester, New York as a tenant by the entirety. ROBERT WARTH has lived in the City of Rochester all his life. He has owned property in the City of Rochester since 1964. As a city tax-

payer since 1964, ROBERT WARTH has observed the taxes of the City of Rochester rise. For example, in 1965-66, ROBERT WARTH's tax on property at 145 Afton Street, Rochester was $392.93. In 1966-67, Robert Warth's tax on the same property was $413.13. In 1967-68, Robert Warth's tax on the property was $430.77. In 1968-69, Robert Warth's tax on the property was $470.94. In 1969-70, Robert Warth's tax on the property was $530.54. In 1970-71, Robert Warth's tax on the property was $566.93. In 1971-72, Robert Worth's tax on the property was $608.45. Robert Warth believes that his taxes have risen in large measure because the City of Rochester has increasingly been caused to assume more than its full share of the burden of tax abated properties because of the exclusionary

practices of the surrounding, adjacent towns to Rochester like the Town of Penfield, the defendant.

2. LYNN REICHERT, individually, alleges that she is a private citizen at 224 Seneca Parkway, Rochester, New York. Along with David M. Reichert, her husband, she owns the real property at 224 Seneca Parkway, Rochester, New York, as a tenant by the entirety. LYNN REICHERT has owned property in the City of Rochester since 1970. As a city taxpayer, she has observed the taxes of the City of Rochester rise. For example, city taxes on the Seneca Parkway property for 1970-71 were $843.15; city taxes on the same property for 1971-72 were $901.33. LYNN REICHERT believes that her taxes have risen in large measure because the City of Rochester has increasingly been caused

to assume more than its full share of the burden of the tax abated properties because of the exclusionary practices of the surrounding, adjacent towns to Rochester like the Town of Penfield, the defendant.

3. VICTOR VINKEY, individually, alleges that he is a private citizen residing at 134 Nunda Boulevard, Rochester, New York. Along with Karen F. Vinkey, his wife, he owns the real property at 134 Nunda Boulevard, Rochester, New York, as a tenant by the entirety. VICTOR VINKEY has owned this property for nine years. As a city taxpayer, he has observed the taxes of the City of Rochester rise. Taxes on his property in 1964-65 were $561.08; in 1965-66, $581.39; in 1966-67, $608.60; in 1967-68, $625.80; in 1968-69, $682.06; in 1969-70, $792.54; in 1970-71,

$840.91; in 1971-72, $892.84. VICTOR VINKEY believes that his taxes have risen in large measure because the City of Rochester has increasingly been caused to assume more than its full share of the burden of tax abated property because of the exclusionary practices of the surrounding, adjacent towns to Rochester like the Town of Penfield, the defendant.

4. KATHERINE HARRIS, individually, alleges that she is a private citizen residing at 108 Garson Avenue, Rochester, New York. Along with Nathan Harris, Jr., her husband, she owns the real property at 108 Garson Avenue, as a tenant by the entirety. KATHERINE HARRIS has lived in Rochester since 1932; she has owned the property at Garson Avenue for about twelve years. As a city taxpayer, KATHERINE HARRIS has observed the taxes in the City

of Rochester rise. In 1959-60, the taxes on the Garson Avenue property were $177.07; in 1960-61, $185.04; in 1961-62, $189.19; in 1962-63, $186.84; in 1963-64, $186.87; in 1965-66, $213.90; in 1967-68, $236.44; in 1968-69, $258.47. KATHERINE HARRIS believes that her taxes have risen in large measure because the City of Rochester has increasingly been caused to assume more than its full share of the burden of tax abated property because of the exclusionary practices of the surrounding, adjacent towns to Rochester like the Town of Penfield, the defendant.

5. The individuals aforenamed make this affidavit in opposition to the defendants' motion to dismiss their complaint on the ground that they have no standing to sue. The basis of the complaint against the Town of Penfield

is that these individuals, property owners and tax payers of the City of Rochester, are damaged by the defendant Town of Penfield's exclusionary action which excludes the construction of low and moderate income housing in Penfield, which actions of the Town of Penfield, cause the City of Rochester to bear the burden of supplying low and moderate income housing in the Rochester area, placing thereby a greater proportion of tax-abated property in Rochester than in the Town of Penfield. The individual property owners and tax payers also maintain that they are damaged by the exclusionary practices of Penfield in that because they are federal tax payers and the federal government appropriates to the Department of Housing in Urban Development certain monies each year for

federally financed housing programs, these individuals do not receive fair or equitable benefit of their federal tax dollar because the Town of Penfield refuses to allow any subsidized or federally financed housing in the Town of Penfield.

6. According to the affiants' information, there has never been a single program of subsidized housing in the Town of Penfield whether that subsidized would be by way of subsidized rental units or subsidized unit housing for sale. In fact, the affiants know that Metro Act of Rochester in 1969, attempted to interest Penfield, along with other Rochester area towns in undertaking the benefit of Section 23 of the U.S. Housing Act of 1937 to provide for low cost rental units in the Town of Penfield. However, the Town of Penfield took no action on the proposal.

Significantly, the Town of Penfield's Housing Task Force, appointed by the Penfield Town Board in 1972 to survey housing needs in the town, reported recently that its opinion survey of Penfield town residents disclosed that while residents believe that Penfield should allow the building of moderate income housing (no inquiry was made by the town on attitude toward low income housing) - something the plaintiffs in this lawsuit allege that the town has forbidden by ordinance, practices and policies in the past - the residents are still opposed to the Town of Penfield undertaking or encouraging any government subsidized housing (except where that housing would be subsidized for the elderly). See page 6 of Report of Penfield Housing Task Force on Moderate Income Housing, June 5, 1972 attached here-

to and made a part hereof as Exhibit A.

7. As is more fully outlined in the chart attached hereto and made a part hereof as Exhibit B, the federal government over the last ten years has appropriated increasing amounts of the federal taypayer dollar in support of an increasingly recognized national commitment to provide decent housing to all citizens. In explaining the Housing and Urban Development Act of 1968, The Report of the President's Committee on Urban Housing - A Decent Home, discusses the national housing goal as follows:

> The place a man lives is more than just another commodity, service, or possession; it is a symbol of his status, an extension of his personality, a part of his identity, a determinant of many of the benefits - and disadvantages - of society that will come to him and his family: schooling, police protection, municipal services,

neighborhood environment, access (or lack of access) to a hundred posibilities of life and culture.

The Report of the President's Committee on Urban Housing: A Decent Home, page 45.

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Housing is not only a matter of a roof and walls but of a neighborhood and a society. People need not just a housing unit, but a neighborhood - a unit in a social setting.

And a national housing policy must look at the relation of housing to the web of living. Although investigation of all the social and physical elements of a suitable living environment is well beyond the scope of this assignment, better community facilities and services are necessary if a housing program is to succeed.

The Report of the President's Committee on Urban Housing: A Decent Home, page 48.

8. Because the Town of Penfield has by its ordinances, policies, practices, customs and usages excluded the use of

monies available for subsidized rentals or sale units in the Town of Penfield, affiants have received no fair or equitable benefit of their federal tax dollar which is appropriated for such purposes. While receiving no fair benefits of that federal tax dollar, affiants have become and are still becoming the victims of the process of urban decay which the exclusionary practices of the defendant Town of Penfield have produced. The process of exodus from the central city by the affluent white population to the fringe areas of the city continues, leaving concentrated in the central city the poor and non-white population. "...(the total population of central cities will increase by somewhat over 10 million persons between 1950 and 1978, but ... over this same period the percentage of Ameri-

cans residing in these central cities will have declined from 34% to 27%." The Report of the President's Committee on Urban Housing: A Decent Home (1968), at page 136. "While the central cities have gradually been losing their white population... the non-white population of the central cities has doubled since 1950, and is projected...to continue to increase. By the projections, 30% of the population of central cities will be non-white in 1978, compared to 22% today and 12% in 1950." The Report of the President's Committee on Urban House - A Decent Home (1968), at page 137. With the shift of the affluent, white population to the suburbs, also comes the shift of jobs to the suburbs. The center city becomes an area inhabited increasingly by non-white, poor and an area of declining business and

job opportunities.

9. This pattern of urban flight is present in the Rochester area just as in other areas of the country. As is illustrated in the population data compiled by the Rochester Center for Governmental Research, attached hereto and made a part hereof as Exhibit C, Rochester city population between 1960 and 1970 has steadily declined while the population in the surrounding, suburban towns has steadily increased. For example, in 1960 the City of Rochester population was 318,611 while the population of the surrounding towns, combined, was 267,776; in 1964, the City of Rochester population had declined to 305,849 and the population of the surrounding suburban towns had risen to 319,279; by 1970, the City of Rochester population had further declined to 296,233 while the

population of the surrounding suburban towns had risen to 415,684. Black population has always been and is increasingly centered in Rochester. In 1960, Rochester black population was 23,586 while the black population of the surrounding, suburban towns was 598; in 1964 the black population in Rochester was 31,751 while the black population in the surrounding, suburban towns was 810; in 1970, the black population in the City of Rochester had risen to 49,647 while the black population in the surrounding, suburban towns was only 2,571. Penfield population has grown from 12,601 in 1960 to 17,337 in 1964 to 23,782 in 1970. Black population in Penfield in 1960 was 23, in 1964 was 22, and in 1970 was 60. A survey published in 1970 entitled Housing in Monroe County - Housing Study Memo Number 4, demonstrates

that 82% of all new jobs in the Rochester area in the next three years will be jobs which develop in the Rochester suburbs.

10. As the Town of Penfield excludes, as affiants believe, by their zoning ordinance, policies, practices, customs, and usages all low and moderate income housing from Penfield, the City of Rochester assumes an ever increasing burden and in turn the affiants as taxpayers of the City of Rochester, assume an ever increasing burden of providing low and moderate income housing, some of which housing is tax abated. As is demonstrated from the tax information on the Town of Penfield collected over the most recent ten year period, attached hereto and made a part hereof as Exhibit D, the Town of Penfield has no tax abated property on its rolls attributable to housing.

11. An examination of the tax data in the last ten years on the Town of Penfield shows dramatically the effect of the urban flight in financial benefits. The value of total taxable property rose from 5,463,588 in 1950 to 71,664,043 in 1971-72. On residences, for example, assessed value rose from 28,417,000 in 1968-69 to 47,484,450 in 1971-72. Assessed valuation in Penfield on shopping centers rose from 1,296,300 in 1968-69 to 2,643,519 in 1971-72. Commercial buildings, assessed valuation, rose from 1,296,300 in 1968-69 to 3,428,800 in 1971-72. Assessed valuation for industries rose from 634,719 in 1968-69 to 911,400 in 1971-72.

12. On the other hand, an examination of the history of tax abated property in the City of Rochester for the same, most recent

ten year period demonstrates that tax abated properties have been an increasing factor on the Rochester city tax roll. Copies of these charts are attached hereto and made a part hereof as Exhibit E. From 1962 through 1965, there were no tax abated housing projects in the city listed. Beginning in 1967-68 tax year, $6,055,919.00 are listed on Rochester exempt property rolls; in 1968-69 this figure rose to $7,333,179.00 to $7,646,774.00 in 1969-70, to $11,194,226.00 in 1970-71, to $11,463,716.00 in 1971-72. As is reported in a recent news article, a copy attached and made a part hereof as Exhibit F, the City of Rochester tax base continues to decline. One of the major reasons cited for that decline is "urban renewal". The city manager reported that the tax base declined "largely

because the amount of tax exempt property grew".

13. As properties are taken off the tax rolls of the City of Rochester, the remaining taxpayers necessarily have to assume individually a larger burden of the taxes in Rochester which are necessary to finance the essential services of the city. As already noted, the tax rate in the City of Rochester has risen continually in the past and continues to rise as the tax abated figure in Rochester arises. The city tax rate rose from $42.06 per $1,000.00 assessed valuation in 1959 to $48.57 by 1964 to $80.95 in 1972. See Exhibit G attached hereto and made a part hereof.

14. It is now almost a matter of certainty that Rochester city tax rate will rise again shortly. See Exhibit H

attached hereto and made a part hereof.

15. While the City of Rochester struggles with all the problems of providing for a mixed urban community, the Town of Penfield by its zoning ordinances and practices and policies incidental thereto, secures for itself a safe place and haven for affluent whites. As is evident from analysis of the zoning ordinance submitted in the affidavits of Messrs.Kling, Taddiken and Farley, submitted herewith, 98% of all vacant land in the Town of Penfield is reserved for expensive, single family home development. In commenting on the recent Report of Penfield Housing Task Force on Moderate Income Housing, June 5, 1972, Pierre Coste, Housing Task Force chairman, has described the "heartland of Penfield residents" being persons who

live in private homes, have lived in Penfield over five years and are between 36 and 55 years of age. See Exhibit I attached hereto and made a part hereof. The survey conducted by the Penfield Housing Task Force reveals that 66% of those surveyed do not approve of federal mortgage assistance for families of moderate income; 65% feel that there is a shortage of moderate income housing in Monroe County, 65% do not approve of tax abatement of local property taxes to provide moderate income housing in Penfield but 64% do approve of tax abatement of local property taxes to provide moderate income housing in Penfield for the elderly, specifically. As previously noted, there was not even an inquiry by the Task Force of attitudes of Penfield residents about construction of low

income housing in Penfield. The survey did show that 63% of those surveyed would not object to living within one mile of a moderate income dwelling but when the distance to the moderate income dwelling was reduced to one-fourth mile only 42% of those responding indicated that they would not object.

16. Seventy-six percent of the people surveyed in Penfield by the Housing Task Force felt that the planning board and zoning board in Penfield are obligated to enforce strict zoning laws to protect existing property owners. In fact, the Housing Task Force report discloses that present zoning in Penfield indeed has the exclusionary effect which the plaintiffs in this lawsuit maintain exist. The Housing Task Force recommended, among other points, that the Town of Penfield take

steps to allow the construction of at least 2,000 moderate income (again no inquiry was made on low income housing units) housing units by 1980 to meet the town's "fair share" of the Monroe County need for such housing. See news article attached hereto and made a part hereof as Exhibit J. In order for there even to be implementation of the recommendation for construction of moderate income housing in Penfield, the Task Force recognized that Penfield's present zoning ordinance does not presently allow for the variety of housing styles, sizes and densities which will be necessary to utilize in order to build moderate income housing "given today's construction economics". See page 13 of Exhibit A. In connection with the release of the Task Force report, Task Force chairman Pierre Coste is quoted as

having stated, "The zoning laws, density requirements and construction costs now prohibit moderate income housing in Penfield."[1] Not only does the present zoning law of Penfield, and the policies and practices of the town, preserve Penfield as an exclusive enclave, residents of the Town of Penfield recognize and appreciate this exclusiveness and intend to keep it that way.

Following the release of the Penfield Housing Task Force report, one Penfield resident, apparently the owner of a $40,000.00 home in Penfield, put the problem succinctly as follows:

> I don't want Penfield to become a low cost development community. If I wanted that, I could move to the center city...the Task Force is going to have to modify either

[1] See news article attached hereto and made a part hereof as Exhibit K.

its statistics or its values. See news article attached hereto and made a part hereof as Exhibit L.

17. The effect of the exclusionary practices and exclusionary laws of the Town of Penfield on the plaintiff City of Rochester taxpayers is a pervasive damage. The damage to the City of Rochester taxpayers is not only the damage of loss of benefits from federal tax dollar, spiraling city tax rate to provide minimum city services but it is as well the real, measurable monetary damage that flows from there being an impairment to the city environment by the calculated acts of the Town of Penfield. The right to decent housing, otherwise stated as the right to an adequate dwelling in an environment where there are adequate opportunities for good schools, community services, job

opportunities, is, at this point in the development of our constitutional law a longstanding right. Justice Vincent in Shelley v. Kramer, 334 U.S. 1 (1948), observed:

> It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment on the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded as an essential pre-condition to the realization of other basic civil rights and liberties which the amendment was intended to guarantee.
>
> Shelley v. Kramer, at 10.

Indeed, responding to the Penfield Housing Task Force questionnaire, 76% of the Penfield persons responding indicated that they believed decent housing is the right of every citizen. See news article attached hereto and made a part hereof as Exhibit M.

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18. There are many indices to measuring the effect of the exclusionary practices by the Town of Penfield on the City of Rochester and City of Rochester residents. The low and moderate income housing pressure created in the City of Rochester by the exclusionary practices of Penfield can be measured, for example, by the number of residential conversions, both reported and unreported in the City of Rochester. Conversions are simply the process of creating additional housing units by breaking up larger ones into smaller ones or by improving existing non-residential space so that it can be used for living purposes. It is a forerunner of a neighborhood's decline unless it is controlled and planned. [1]Recent data indicates that from the 1960 to the 1970

.....

[1]Source of information Monroe County Planning Council.

census there were almost twice as many unreported residential conversions taking place as there were reported ones. The effect of such trends is ultimately to increase densities to a point where public services and facilities become overtaxed while increasing absentee ownership.

19. The effect of Penfield's exclusionary practices which create a concentration of low, moderate housing in the City of Rochester and produce, as some of the effects, a density crush, also has direct effect on the City of Rochester and the City of Rochester residents in incidents of crime and provision for law enforcement.

> Some of the conditions associated with the type and amount of crime are related to the geographic area in population - the density and size of a community; the race, age, and sex composition of its population; economic status and mores of the inhabitants; educational, recreational, and

religious characteristics; the stability of the population in terms of commuters and seasonal visitors; and the climate. The Police System, Present/ Proposed, Rochester Center for Governmental and Community, Research, Inc. (1970) page 35.

In reporting in March of 1972 on the most recent crime statistics in the City of Rochester, see Exhibit N attached hereto and made a part hereof, City Police Commissioner John A. Mastrella commented that the number of crimes is directly related to the density of population in an area. More people mean more crime, he said.

20. Unless the Town of Penfield is prevented from continuing its exclusionary practices and enforcing its exclusionary zoning laws and policies, the plaintiffs city taxpayers will continue to be grievously damaged in terms of monetary loss

and deprivation of rights,as more specifically outlined above. There are 48,005 persons who are residents of the City of Rochester and property owners in the City of Rochester. Plaintiffs as residents and taxpayers of the City of Rochester submit that they adequately represent this large class of persons in this lawsuit.

/s/ Robert J.Warth
ROBERT WARTH

Jurat
omitted
in
Printing.

/s/ Lynn D. Reichert
LYNN REICHERT

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in
Printing.

AFFIDAVITS - ROBERT WARTH, LYNN REICHERT, VICTOR VINKEY and KATHERINE HARRIS

/s/ Victor Vinkey
VICTOR VINKEY

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/s/ Katherine Harris
KATHERINE HARRIS

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EXHIBIT A.

Report of

PENFIELD HOUSING TASK FORCE

on

MODERATE INCOME HOUSING

June 5, 1972

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INTRODUCTION

Origin and Purpose

The Penfield Housing Task Force was created by the Penfield Town Board at its regular meeting on March 6, 1972. The resolution establishing the Task Force appears in Appendix A on page 21.

The Preamble and Purpose from that resolution are as follows:

Preamble: The Penfield Town Board recognizes that a shortage of moderate income housing exists in the County of Monroe, and that the Town of Penfield has a responsibility to help alleviate that shortage. We hereby create the Penfield Housing Task Force and charge it with the following purpose.

Purpose: To analyze the various presently existing methods by which moderate income housing can be built in Penfield and to recommend the types and quantity that should be built. The recommendations of the Housing Task Force may also include: 1) Identification of general or specific locations for moderate income housing in Penfield, and 2) changes, if any, needed in the Penfield Zoning Laws to permit the construction of

the recommended moderate income housing.

Membership

The Chairman, Pierre Coste and Co-Chairman, Dr. J. Donald Hare of the Task Force were appointed at the March 6 Town Board meeting. Other members were appointed at the April 3 meeting. The membership of the Task Force was selected to represent a cross section of views and philosophies within Penfield. The Task Force members are:

Phillip Bailey	1912 Salt Road
Wendy Bickmore	1849 Blossom Road
Alan Bernstein	129 Shirewood
Pierre Coste	107 Woodhaven Drive
Roy Everson	2467 Penfield Road
Joseph Frate	38 Hitchcock Lane
Thomas Hammond	108 Henderson Drive
J. Donald Hare	52 Farmbrook
Clarence Heininger	2048 Five Mile Line Road
Max Holtzberg	50 Old Barn Circle
Thomas Johnston	29 Royal View
Evelyn Landon	56 Hilltop Drive
David O'Brien	2 Greenwood Cliff
Cornelia Patten	143 Brentwood Drive
Robert Peterson	152 Willow Bend Drive
George Shaw	1700 Jackson Road
Edith Wilcox	1736 Jackson Road

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WHAT IS "MODERATE INCOME"

-Just about all of us living in Penfield have been (or maybe still are, or perhaps will be) in the moderate income range.-

Because the term moderate income is a subjective one, definitions will vary. This Task Force has reviewed various definitions and has considered the income levels set by various agencies that assist families in obtaining housing. (See Appendix B on page 23.)

For the purpose of this report we will consider moderate income families as families having incomes between $5,500 and $11,000 per year, depending on the size of the family. That is a single person or couple with no children would be towards the bottom of the range. Families with one or two children would be towards the center of the range, and families with three or more children would be towards the top of the range.

Occupations often considered in the moderate income range are: retail and service industry employees, municipal employees, school district employees. A large local manufacturing facility indicated four groups of people are typically hired in the moderate income range: unskilled assembly line workers, skilled tradesmen, secretaries and recent college graduates. The elderly, young people and minorities are often in the moderate income range.

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Moderate income housing, that is, housing which moderate income families can afford to purchase or rent, should in most cases be priced below $20,000 or carry a rental price of less than $150. a month. Again the size of the family will be an important variable.

At the outset of this study the Task Force suggested that the maximum purchase price of a home should be about $25,000. This was based on the assumption that a family can afford housing valued at roughly two and a half (2 1/2) times its income. Discussions with mortgage officers at local lending institutions indicate that this factor should be reduced to two (2) times, because of increased interest rates and taxes. Therefore, the $20,000 figure is a more realistic maximum.

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OPINION SURVEY

Purpose:

a) To measure the opinions of Penfield voters toward moderate income housing in the town.

b) To determine what effect a straightforward presentation of some of the facts (pro and con) relating to key issues has on opinions.

c) To provide an additional communication channel for Penfield residents to express their views on housing issues.

Participants:

2319 questionnaires were sent to every fifth voter registered for the November 2, 1971 General Election. 811 or 35% of the questionnaires were returned and tabulated. This is considered to be a good rate of participation for this type of survey.

Survey Design:

A four page questionnaire consisting of 31 questions dealing with moderate income housing and related issues and 11 questions on personal data was mailed to each of the participants on April 13, 1972. A letter of explanation and a postage-paid return envelope was enclosed. In addition, half the mailing contained a fact sheet titled "Some Points to Consider".

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Method of Analysis:

a) Each reply was assigned an opinion index based on the answers to questions 8,15,16,17,21,26,28. The opinion index has a range from +110 for a respondent extremely positive toward moderate income housing in Penfield to -110 for a respondent expressing an extremely negative opinion. An index between +10 and -10 is considered neutral.

b) Replies to 39 questions and the opinion index were coded and punched cards were prepared. Six questions were excluded from the tabulation to comply with a limitation imposed by the computer program. The University of Rochester computer facilities were utilized to aid the analysis of the data.

c) The analysis includes the following factors:
   1. Opinion profile of the 811 replies.
   2. Tabulation of replies to the individual questions.
   3. Cross tabulation of replies to selected pairs of questions.
   4. The effect of "Some Points to Consider" on opinions.
   5. Summary of the general tone of written in comments.

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Results: (See Appendix C on page 25 for Tabulated Questionnaire)

The number of respondents having positive opinions is greater than those having negative opinions. This difference is statistically significant.

	Number	Percent
Positive opinions (+15 to +110)	402	49%
Negative opinions (-15 to -110)	289	36%
Neutral opinions (+10 to -10)	120	15%
	811	100%

Average overall opinion index	=+ 5.95
Average opinion index of positive replies	=+44.9*
Average opinion index of negative replies	=-46.6*

Although the analysis is not yet completed, initial indications are that the fact sheet did not significantly affect the opinions expressed.

The general tone of responses to the questionnaire can be seen by looking at those questions where 60% or more were either above or below the neutral range.

Opinion Questions:

No. 7 81% would be more favorable to an apartment house or town house

*Positive and negative replies were calculated from Zero to +110 and Zero to -110 respectively in developing this average

EXHIBIT A

if it were known that residents were paying their "fair share" of town services.

No. 1 76% feel decent housing is the right of every citizen.

No. 25 76% feel the Planning and Zoning Boards are obliged to enforce strict zoning laws to protect existing property owners.

No.40a 75% feel more housing is needed for senior citizens.

No. 26 72 % feel the Town should formulate plans and take actions which will provide moderate income housing which best serves the progress of the Town.

No. 9 66% do not presently find the idea of living in a condominium appealing. This reduces to 44% if the family is grown up (quest. No. 10).

No. 11 66% do not approve of federal mortgage assistance for moderate income families.

No. 3 65% feel a shortage of moderate income housing exists in Monroe County.

No. 13 65% do not approve of tax abatement of local property taxes to provide moderate income housing in Penfield (in general).

EXHIBIT A

No. 22 64% approve of tax abatement of local property taxes to provide moderate income housing in Penfield for the elderly (specifically).

No. 40b 64% feel more housing is needed for young families.

No. 18 63% would not object to living within one mile of moderate income dwellings. This reduces to 42% if the distance is reduced to 1/4 mile (quest. No. 16).

No. 40d 63% feel more housing is needed for moderate income industrial and public service workers.

Personal Data Questions:

No. 37 90% own their present dwelling.

No. 36 88% Reside reside in a private home.

No. 32 76% expect to live in Penfield for more than five years.

No. 31 69% have lived in Penfield for more than five years.

No. 41 69% feel they understand the main issue

Analysis is continuing to summarize written-in comments, to establish the significance of the fact sheet, and to further condense the cross tabulated question pairs. These results will be included in a follow up report.

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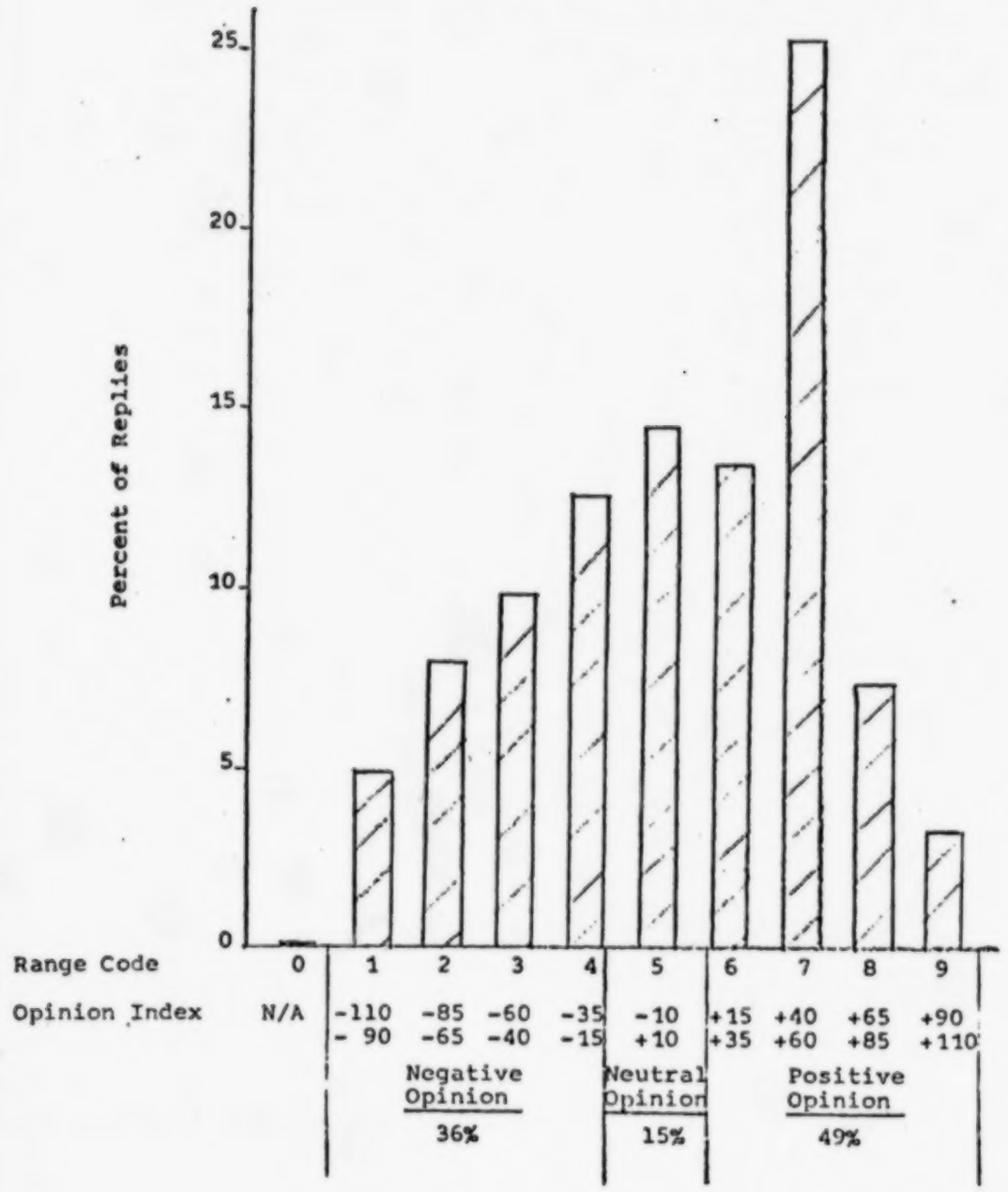
DISTRIBUTION OF OPINION INDEX



THE HOUSING SHORTAGE

In Monroe County

The housing shortage in Monroe County was formally documented in a study prepared by the Rochester Center for Governmental and Community Research for the Metropolitan Housing Committee, Joseph C. Wilson, Chairman. It its Summary Report, dated April, 1970, the report indicated a need for 69,600 additional housing units in Monroe County in the 1969-1975 period. Of these, 51,900 were identified as low and moderate income housing needs.

In a Research Note dated August 19, 1971 the Monroe County Planning Council has updated the data on the housing need in a study entitled 10-year Housing Targets for Monroe County. This study (See Appendix D, page 31) indicates a need for 80,000 additional housing units in Monroe County between 1970 and 1980. Of these 55,000 are identified as needed for growth and 25,000 for replacement. All of the replacement units and 50-65% of the growth are required for low and moderate income families - or about 52,000 to 60,000 low and moderate income housing units. Of these probably two thirds are moderate income and one-third low income.

Penfield's"Fair Share"

Penfield is a part of Monroe County. The residents of Penfield are dependent on the balance of Monroe County - both the City of Rochester and the other suburbs - for

a broad variety of needs and services. These include jobs (52% of Penfield wage earners work in the City of Rochester), cultural events, shopping and commercial services, sports events, etc. It is the belief of this Task Force that while Penfield shares many of the features offered by the balance of the County, by the same token it shares many of the problems of the County, and has an obligation to share in the solution of these problems.

Penfield's population in 1970 was 23,782. (See Appendix E on page 34) for data on Penfield's population and other data from the 1970 Census). During the decade of the Seventies, Penfield's population is projected to increase to 34,800 in 1980. This growth is about 10% of the total projected Monroe County growth of 104,500. Referring to the data above on housing needs, we can calculate Penfield's"Fair Share" of the County's moderate income housing needs as follows:

Housing Units needed for growth	55,000
Replacement Housing units	25,000
Total Need	80,000
Low & Moderate Income(50-65%)	55,000
Less Replacement Units	25,000
Additional Low & Moderate Units	30,000

Two-Thirds moderate Income 20,000

Penfield's share (10% of growth) 2,000

Before accepting this as Penfield's "Fair Share" it is necessary to review Penfield's present share of moderate income housing units - that is to take into account the type of housing mix presently existing in the Town of Penfield. An analysis of the 1970 Census data on value of housing units (See Appendix F, page 35) indicates that 19% of Penfield's present housing units can be classified in the moderate income range. Of this mobile homes represent more than half (11% of the 19%).

The percent of moderate income housing in the 19 Towns in Monroe County ranges from 10% (Brighton) to 41%(Riga). The average for all Towns is 24%. Fourteen of the 19 Towns have a higher percent of moderate income housing units than Penfield.

Based on these data the Penfield Housing Task Force recognizes Penfield's "Fair Share" of the moderate income housing shortage in Monroe County to be on the order of 2,000 units in the 1970-1980 period.

It is recognized that population projections are subject to error, and must be updated periodically. The most recent population projections for Penfield for the 1970-1980 period prepared by the Rochester Center for Governmental and Community Research are expressed as:

Low growth rate - 600 persons per year

Medium growth rate - 1000 persons per year

High growth rate - 1400 persons per year

The Task Force therefore recommends that this study be updated in about two years to reflect actual growth in the 1972/3 period.

STYLES OF CONSTRUCTION

Any discussion of styles of construction of moderate income housing must includea discussion of costs, including land acquisition costs, land development costs and finally construction costs. These costs, plus zoning requirements and current preferences in housing (market preferences) will determine to a large extent the styles and sizes of moderate income housing possible at a given point in time.

Some alternative styles of construction which could be built to sell for $20,000 or under, are: small single family homes, zero lot line homes or patio homes, town houses, multiplex - particularly quadraplex, garden apartments, medium rise apartments and high rise apartments.

This Task Force does not recommend the construction of either medium rise (4 to 6 stories) nor high rise apartments in the Town of Penfield as a mechanism for achieving moderate income housing targets. This style of construction would result in a population density which would exceed that necessary to encourage moderate in-

come housing; it may require major changes in such public services as fire protection, and in general would not be compatible with the suburban character of Penfield.

Preferences in housing styles change over time. While small single family homes and garden apartments were popular twenty years ago, neither appears to appeal to builders in the 1970s as a marketable product. It may be possible to construct a small ranch or cape cod on a lot of 5-6,000 sq.ft. within the small moderate income price range but builders are inclined to believe they would not sell and therefore do not wish to construct them. Garden apartments are designed so that several families share a common entrance to the building. This single characteristic has caused them to lose popularity. The Townhouse, in which each family has its own exterior entrance, is the 1970 replacement for the garden apartment.

There is no experience with zero lot line or patio homes in the Rochester area. The concept is that the house is built in an L or U shape with a patio occupying the balance of the lot, either at the unused corner in the L shape, or in the center of the U. Since the homes are built on or very near the lot line, densities are higher and costs lower than typical single family homes.

The Townhouse style of construction is becoming very popular in the Rochester area.

Although many variations exist, the Townhouse is typically a two story dwelling attached in a row to other townhouse units each having its own individual entrance. Townhouses can be built in a high income price range or in moderate income ranges. The differences are in the size of the unit and in the extra features offered. For example, a high income Townhouse may have 1,400 - 1,800 sq.ft., a basement, 2 1/2 baths, air-conditioning, etc., while a moderate income Townhouse will probably contain less than 1,000 sq.ft., be built on a slab, have one bath and not be air-conditioned. (Appendix G on page 36 indicated the cost of some of the more common "extras").

The second style of construction currently in the Rochester area which can be constructed in the moderate income range are multiplex units. Variations include duplex, tri-plex, quadraplex, eightplex, etc. (The prefix indicates the number of units contained in each building). The quadraplex appears to be the most popular at this point in time. Many different designs of quadraplex units are possible.

This Task Force recommends that the Penfield Town Board be open to proposals for moderate income housing which utilize Townhouse and Multiplex styles of construction. Higher densities per acre than those allowed by the present Zoning Ordinance may be required to enable the construction of these moderate income units, with perhaps more of the total area utilized than presently allowed.

EXHIBIT A

Since styles of housing change, both in terms of design and in terms of preference, it is important that the Town Board and Planning Board remain cognizant of these changes and encourage those which will contribute to the overall character of the Town.

EXHIBIT A

Construction Costs

One builder in the Rochester area provided us with some general cost parameters for moderate income housing using the Townhouse or Quadraplex styles of construction:

Land Acquisition Cost	$ 1,300.
Land Development Cost	1,700.
Construction Cost 900 Sq.ft. at $12.	10,800.
Margin (includes selling expenses, accounting, general management, financing, supervision and profit - 27%* of selling price	5,100.
Total	$ 18,900.

Both land acquisition and development costs are calculated on the basis of 12 units per acre. Appendix H on page 37 shows approximate land acquisition and development cost per dwelling unit at various densities.

*The builder's margin on a higher cost single family dwelling unit will be about 18% of the selling price. Since many of the costs covered by the margin are fixed, the margin represents a higher percentage of the selling price of lower cost houses (about 27%). This relationship is shown in the Value Ratio Curve in Appendix G.

PENFIELD ZONING ORDINANCE

The Penfield Zoning Ordinance contains six basic sections pertaining to housing:

- Residential AA District
- Residential A District
- Apartments or Multiple Dwelling
- Town Houses
- Mobile Homes
- Planned Unit Development (P.U.D.)

A Summary of the requirements of the Housing sections of the Zoning Ordinance are presented in Appendix I on page 38.

In the previous section of this report the conclusion was reached that in order to build moderate income housing given today's construction economics, it will be necessary to utilize a variety of housing styles, sizes, and densities. We have recommemded that the Town Board welcome and encourage this variety in order to meet Penfield's fair share of moderate income housing.

Penfield's Zoning Ordinance does not presently provide for this variety of housing styles and sizes. They could be accommodated by granting variances to the Ordinance; however, the frequent granting of variances is generally considered contrary to good zoning and planning practices. Instead we recommend that the Penfield Town Board adopt changes to the

present Zoning Ordinance necessary to accommodate the broad variety of housing styles, sizes, and densities earlier recommended. These changes should be adopted as early as possible.

P.U.D.

Penfield's P.U.D. Ordinance must be considered separately. Penfield was the first Town in Monroe County to adopt a P.U.D. Ordinance. This step was taken at least partly as a result of the recommendations of the Penfield Housing Committee, Dr. Clarence Heininger, Chairman, in its report to the Town Supervisor dated January, 1970. One of the primary reasons for adopting a P.U.D. Ordinance was to permit the construction of moderate income housing.

Three P.U.D.s have been approved to date with a total of 1615 dwelling units. Regrettably these P.U.D.s will provide a very limited amount of low/moderate income housing. Based on present tentative plans, only 80 dwelling units are in this range.

These are units for the elderly in the Standco P.U.D. (See Appendix J on page 42 for current estimates of the types and values of the P.U.D. dwelling units).

The Housing Task Force was unable to reach agreement on a firm recommendation pertaining to the P.U.D. Ordinance. Some suggested recommendations were:

- Revise the P.U.D.Ordinance so as to conform to the Monroe County Planning Council's model P.U.D. Ordinance.

- Leave the present P.U.D. Ordinance as it is until we gain further experience with it.

- Have the Planning Board review the Ordinance and propose changes.

- Rescind the Ammendment to the P.U.D. Ordinance passed by the Town Board in the Fall of 1971, and thus return it to its original form.

Much of the discussion among Task Force members centered around the detailed space requirements as well as bulk and use specifications in Penfield's P.U.D. as contrasted to the Planning Council's "Model". The "Model", which is in the process of revision, recommends that no density specifications be stated in the Ordinance; instead, that each proposal shall be evaluated on its own merits.

The opinions of Task Force members divided generally as follows:

- without detailed requirements, the Planning and Town Boards will have no firm criteria against which to measure a P.U.D. proposal. This could result in unequal treatment of various proposals and in charges of unfairness or even litigation based on alleged unfairness.

VERSUS

- the intent of the P.U.D. concept is to promote maximum flexibility in the design of a development so as to best utilize the characteristics of a given piece of land. Imposition beforehand of rigid specifications defeats this intent.

EXHIBIT A

PRIVATE ENTERPRISE / GOVERNMENT ALTERNATIVES

Moderate income housing can be built and financed either through private enterprise or with various forms of government financial assistance. Both profit oriented private enterprise and non-profit organizations can construct moderate income housing under federal government subsidy programs.

PRIVATE ENTERPRISE

This Task Force expresses a preference for the construction of moderate income housing by private enterprise. Private builders in the Penfield area indicate they can build moderate income housing without government subsidies. The Linden East development is the first evidence of this in the Penfield area. In the past builders have preferred to construct "high income" housing. There are indications that a shift in demand is occurring and that the "high income" housing market may be approaching saturation.

In the past the only bonafide proposals for moderate income housing were based on government subsidized programs. It was felt that a combination of land costs, constructions costs, zoning requirements, interest rates and taxes made government subsidization necessary to provide housing for moderate income families. Since it is too soon to tell if private enterprise can and will provide the required moderate income housing, this Task Force recommends that the Town Board consider government subsidized proposals, while at the same time acknowledging a preference for private enterprise proposals.

EXHIBIT A

Government subsidized developments have one advantage over those constructed without subsidy: the residents can be limited to moderate income families. If the goal of constructing moderate income housing is to provide housing for moderate income families, then government subsidized housing guarantees this will occur.

On the other hand private enterprise will sell a moderate income dwelling unit to a person with a high income, if he wishes to purchase it. The experience at Linden East is that roughly 50% of the purchasers are high income families.

This Task Force accepts this as normal workings of the marketplace, but recognizes that it raises several points. First, it casts serious doubt on the belief that high income families prefer not to live near lower income families.* Second, it means that the construction of moderate income housing itself does not necessarily assist in solving the shortage of housing for moderate income families (if the housing is purchased by high income families). Third, it suggests that more moderate income housing will be required to meet the needs of high income persons desiring this housing as well as the needs of moderate income families.

*The opinion survey indicates that Penfield people are more concerned with the ability of other residents to pay their "fair share" of the cost of services than they are with their economic, educational and occupational background. (Questions 6 and 7).

FINANCING

In discussions with four local lending institutions we learned that several banks are presently granting a substantial percent of their mortgages to families in the moderate income range. Mortgage money is readily available. A 20% down-payment is required on conventional mortgages.

Stable employment and a low level of outstanding debts are key criteria in granting mortgages to moderate income families. Rules of thumb used to determine the amount of mortgage a family can carry are:

- The purchase price of the home should not exceed twice the annual salary.
- One week's gross salary or 23% of the gross monthly income should equal the monthly mortgage payment including principal, interest, taxes and insurance.

Mortgage officers generally were opposed to granting 35-year mortgages although these are permitted by New York State law. Some felt they probably would go along with the 35-year mortgage in the future. A longer mortgage results in a lower monthly payment and would permit more moderate income families to purchase homes.

Mortgage officers preferred Conventional mortgages to FHA mortgages. Delays in construction while waiting for FHA inspections and longer evaluation times before granting mortgages were key reasons given.

FEDERAL GOVERNMENT PROGRAMS

It is beyond the scope of this report to attempt to explain in detail the various federal government programs designed to assist moderate income families in obtaining housing. A brief description of two key programs, known as "Section 235" and "Section 236" of the Housing and Urban Development Act of 1968 are shown in Appendix K on page 43. A more detailed explanation of Section 235 requirements appear as Appendix L on page 44.

Neither 235, nor 236 requires tax abatement of local property taxes. Instead both provide interest subsidies. That is, the cost of housing, either rental or purchased, is lowered to the resident since the federal government pays a portion of the interest on the mortgage.

NEW YORK STATE PROGRAMS

All New York State programs for moderate or low income housing require tax abatement except for one category of housing for the elderly. These are authorized under the Mitchell Loma Act.

Urban Development Corporation (UDC) is a State agency and public benefit corporation created by the New York State Legislature in 1968 to develop and finance housing for low, moderate and middle-income families. UDC has announced plans for 350 rental dwelling units of townhouse and garden apartment design to be constructed in a development off Penfield Road and Nine Mile Point Road.

EXHIBIT A

Any Town in New York State may ask the State Legislature to establish a Town Housing Authority. The function of a housing authority is to act as a conduit for federal housing funds for low income families. The Authority owns and operates the property. This Task Force does not recommend that the Town of Penfield establish a Housing Authority as it is not needed to enable the construction of moderate income housing.

Supreme Court, U. S.
FILED
NOV 29 1974
MICHAEL RODAK, JR., CLERK

APPENDIX
(Vol. II — Page 517 to End)

IN THE

Supreme Court of the United States
OCTOBER TERM, 1974

No. 73-2024

ROBERT WARTH, et al,

Petitioners,

—*v*—

IRA SELDIN, et al,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

Petition For Certiorari, Filed July 15, 1974
Certiorari, Granted October 15, 1974

SPAULDING LAW PRINTING CO., SYRACUSE, N. Y.

(S 6937)

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IMPACT ON PENFIELD

This section will review the impact of the recommendations of this Task Force on various public services in the Town. Certain services can be handled with relative ease. For example, in telephone conversations officials at Rochester Gas and Electric Company, Rochester Telephone Company and the Monroe County Water Authority assured the Task Force that the gas, electric, telephone and water services will be readily extended to all housing developments in the Town of Penfield.

Sanitary Sewers

In contrast the sanitary sewer situation is too complicated to be dealt with effectively within the scope of the activities of this Task Force. At present there is insufficient capacity to handle 2000 additional dwelling units in Penfield, regardless of their location or cost. In fact, certain approved developments cannot start construction until portions of the sanitary sewer problem are resolved. The Town Board is aware of these problems and is evaluating solutions. This Task Force assumes that satisfactory solutions will be identified and that the appropriate action will be taken to permit the normal growth of Penfield as well as the construction of the recommended moderate income housing.

Roads, Traffic and Shopping

The Penfield Conservation Board has as one of its responsibilities the evaluation of Penfield's road network and traffic patterns. As specific proposals for moderate income housing are presented to

the Planning Board and Town Board, this Task Force asks that the Conservation Board analyze the anticipated impact of each development on the traffic load and patterns. Properly located housing and properly planned roads will present no major problems.

Our concern regarding shopping is less with quantity than with quality. It is reasonably certain that proposals for shopping centers and commercial services will be forthcoming as housing, either moderate or high income, expands. The Town Board and Planning Board must be careful that only well designed, attractive shopping areas, such as Browncroft Corners, be approved. A repeat of the Panorama Plaza situation must be avoided.

Public Transportation

At the present time a moderate amount of public transportation to and from the town of Penfield exists.

Trailways has approximately 17 buses/day from downtown Rochester to Penfield. They travel along Penfield Road to Fairport/ Webster Road, to Whalen Road, to Five Mile Line Road. The first bus leaves Rochester at 6:40 A.M. and the last at 9:30 P.M. The fare from Rochester to Penfield is $.50. This service has some variation on weekends.

The R.T.S. route to Webster crosses Penfield on Browncroft Blvd. and Creek Street. Also, R.T.S. has a number of

charter buses from Penfield to Kodak.

R.T.S. is looking into "Park and Ride" service from Panorama Plaza to Rochester and from Fairport along State Route 250 to Xerox in Webster. Both Park and Ride projects are in the planning stages and will be put into service if the need exists.

School System - Capacity

In discussions with Penfield School Board members and Administrators it was concluded that public school age children from the moderate income housing developments already proposed could be handled within present facilities. They were aware that the bulk of the increase from present proposals would be in the area now served by Harris Hill School.

They indicated that the increase in school population from moderate income housing would be gradual as not all the homes would be built at one time. This would help assimilation. Also, they indicated the proposed Middle School reorganization plan would provide increased capacity at Harris Hill. Lastly, if in the future the increase could not be handled by Harris Hill, the lines within the School District could be redrawn. This has occurred over the years as the population has grown.

Both board members and administrators asked that they be kept informed of proposed housing developments as early as possible, so that their plans for the

school system can always reflect latest information. The Webster School System must also be advised of proposed developments in the areas of the Town of Penfield which it covers.

School System - Tax Impact

It is possible to measure the impact of a moderate income development on school taxes, and to compare this impact with that of a "normal" development. Since, however, the New York State School State Aid formula is dependent on some factors that are three years old, these impacts can accurately be calculated by assuming the two developments were constructed three years ago. Since we know the actual district assessed valuation and state aid in those years, the changes caused by either a moderate income (high density) development or a high income (low density) development can be calculated.

The data in the following comparison has been compiled and the computations prepared by the Center for Governmental Research Inc. (See Appendix M on page 48 for detailed computations.)

Assumptions	High Density Development	Low Density Development
Area	37 acres	37 acres
Density per acre	9.5	1.75
Number of dwelling units	350	65
Selling Price/Unit	$ 18,400.00	$ 37,500.00
Public school-age children per dwelling unit	.5	1.75
Number of these children	175	115
Net Cost/pupil	$ 1,308.16	$ 1,308.16
Total additional cost	$228,928.00	$ 150,438.40
Average full value tax rate	$ 22.98	$ 22.98
Average assessed value tax rate	62.112	62.112
Assessed Valuation	$2,382,800.00	$ 901,875.00
Property Tax Paid	$147,872.00	$ 55,980.00

Effect on School Property Tax Rate

	High density Development	Low Density Development
Full Value Tax Rate		
1 year old development	+.21	+.43
2 year old development	+.21	+.43
3 year old (& subsequent years)	-.06	+.15
	-.02	-.01
Assessed Value Tax Rate		
1 year old development	+.594	+1.17
2 year old development	-.162	+.405
3 year old (& subsequent years)	-.054	-.0297

The conclusions from the above are:

1. Both developments cause an increase in the school property tax rate in the Penfield School District in the first year.

2. The increase caused by the high income (low density) development is twice as high as the increase caused by the moderate income development in the first year. ($1.17 per/1000 vs. .59 per/1000).

3. The moderate income development (high density) causes a decrease in the school property tax rate in the second and subsequent years.

4. The residents in the moderate income development are paying their "fair share" - in fact, better than the residents in the high income development.

EXHIBIT A

APPENDIX A

PENFIELD HOUSING TASK FORCE "CHARTER"

Preamble

The Penfield Town Board recognizes that a shortage of moderate income housing exists in the County of Monroe, and that the Town of Penfield has a responsibility to help alleviate that shortage. We hereby create the Penfield Housing Task Force and charge it with the following purpose.

Purpose

To analyze the various presently existing methods* by which moderate income housing can be built in Penfield and to recommend the types and quantity that should be built. The recommendations of the Housing Task Force may also include: 1) Identification of general or specific locations for moderate income housing in Penfield, and 2) changes, if any, needed in the Penfield Zoning laws to permit the construction of the recommended moderate income housing.

*The work "method" is intended to include two distinct factors: 1) types of construction (e.g. single family, duplex, multiplex, etc.) and, 2) ways in which moderate income housing can be authorized and financed by private and governmental institutions and organizations.

Scope

In preparing recommendations the Housing Task Force should consider the following subjects:

EXHIBIT A

APPENDIX A (Cont'd)

- The opinions and attitudes of the people of Penfield.
- The probable impact the recommendations of the Task Force will have on the present residents of the Town.
- Penfield's present population, including: age, income, location of employment, mobility.
- Penfield's present housing, including: age of housing, property values, cost of construction, housing mix.
- Penfield's geography, including: important, unique, topographical features, drainage problem areas, etc.
- Penfield's public facilities, including: sewer system (before and after Pure Waters project, roads and highways, school systems (Penfield, Webster, parochial), shopping areas, parks, public transportation, public utilities, water supply.
- The Penfield Master Plan.
- Penfield's Zoning Ordinance, including the P.U.D.Ordinance and the Proposed Revised Zoning Ordinance prepared for the Town by the Monroe County Planning Council in 1966.
- All relevant information and data available from: Penfield Town Board, Penfield Planning Board, Penfield Zoning Board of Appeals, Penfield Conservation Board, various public and private resource centers (e.g.Rochester Center for

EXHIBIT A

APPENDIX A (Cont'd)

Governmental and Community Research, Inc.), the previous Penfield Housing Committee (Heininger Committee), builders and builder's associations.

Composition

The Housing Task Force shall be comprised of residents of the Town of Penfield. The Chairman shall be Pierre Coste, 107 Woodhaven Drive. The Co-Chairman shall be Dr. J.Donald Hare, 52 Farmbrook Drive. Sub-committees of the Housing Task Force may be established as needed.

Funding

The Town of Penfield will provide funding in the amount of $500.00 to the Housing Task Force. Funds will be released only with the approval of the Town Board after review of the specific purpose for which the funds are required. The funding is not intended as remuneration for Task Force members services, but rather to purchase such services as may be needed to carry out the Task Force's objectives.

Completion of Recommendations

The goal of the Housing Task Force will be to present its recommendations to the Penfield Town Board at its June 5, 1972 meeting.

EXHIBIT A

- The Monroe County Planning Council suggests that the Moderate Income range is from $5,500 to $11,000, depending on family size.

As contrasted to Moderate Income, "Low Income" families are generally considered to be families who could qualify for public housing. The Rochester Housing Authority has the following net annual income limits for admission:

		Low Income Limit
One Person	-	$4,200
Two Persons	-	$5,200
Four Persons	-	$5,900
Six Persons	-	$6,800
Eight Persons	-	$7,800

The F.H.A. (H.U.D.) limits, which are often used as moderate income limits, are set at 135% of the Public Housing limits.

EXHIBIT A

APPENDIX C

OPINION SURVEY - TABULATED QUESTIONNAIRE

Dear Penfield Resident,

We invite your participation in an opinion survey which will provide some basic information about the views of town residents on the subject of moderate income housing. Your honest opinions as a Penfield resident would be greatly appreciated.

At the regular meeting of March 6, 1972 the Penfield Town Board created the Penfield Housing Task Force. The task force was given the responsibility "to analyze the various existing methods by which moderate income housing can be built in Penfield and to recommend the types and quantity that should be built." A fundamental requirement was that the Task Force actively involve as many Penfield Residents as possible.

You are one of approximately 2,300 persons randomly selected from the Town's voter registration lists to participate in the survey. Results of the survey will be made public as part of the Housing Task Force's report to be presented at the June 5, 1972 meeting of the Town Board (Penfield Town Hall, 8:00 P.M.).

Please complete the enclosed questionnaire at your earliest convenience and return it to the Town Hall in the envelope provided. Tabulation of replies will begin shortly.

EXHIBIT A

APPENDIX C (Cont'd)

I M P O R T A N T

All replies will remain completely anonymous.
Your participation is very important to the success of the survey.

Thank you for your interest.

Robert A. Peterson
Survey Coordinator
152 Willow Bend Drive
Penfield, New York 14526

Penfield Housing Task Force

Philip Bailey	1912 Salt Road
Wendy Bickmore	1849 Blossom Road
Alan Bernstein	129 Shirewood
Pierre Costs	107 Woodhaven Drive
Roy Everson	2467 Penfield Road
Joseph Prate	38 Hitchcock Lane
Thomas Hammond	108 Henderson Drive
J.Donald Hare	52 Farmbrook
Clarence Heininger	2048 Five Mile Line Road
Max Holtzberg	50 Old Barn Circle
Thomas Johnston	29 Royal View
Evelyn Landon	56 Hilltop Drive
David O'Brien	2 Greenwood Cliff
Cornelia Patten	143 Brentwood Drive
Robert Peterson	152 Willow Bend Drive
Barbara Ruben	140 Holley Brook
George Shaw	1700 Jackson Road
Edith Wilcox	1736 Jackson Road

APPENDIX C (Cont.)

SOME POINTS TO CONSIDER.

The Monroe County Planning Council forecasts a need for 80,000 additional housing units by 1980 in the County. Of these, about 35,000 will be required to house families in the moderate income ranges.

The FHA defines moderate income as yearly income approximately between $5,000 and $10,000 (another definition used $6,000 to $11,000).

Families in this income range can typically afford housing costing:

$10,000 - $25,000 for an owned dwelling
$100/mo. - $200/mo.for a rented dwelling

Senior citizens, industrial and service workers, school teachers, policemen, minority workers, young married couples are the main users of this type of housing.

The 1970 Census shows 1,242 owner occupied housing units below $25,000 and 825 renter occupied units below $200/month and 800 mobil homes out of Penfield's total of 7,033 year-round housing units.

Present AA zoning (density and lot size requirements) and construction costs leave little chance that single family dwellings can be built for the moderate income range in Penfield.

Penfield was one of the first towns in this area to incorporate a Planned Unit Development (PUD) provision into its zoning ordinance. A PUD provides for a mixture

of single and multiple family dwellings and accessory facilities in a setting which attempts to preserve the natural features of the land.

One of the three PUD's under development in Penfield has encountered significant neighborhood resistance.

Urban Development Corporation (a state corporation which is exempt from local zoning ordinances and has the authority to construct subsidized housing with tax abatement in areas it selects) has recently announced plans to construct a 350 unit town house and apartment complex in the vicinity of the intersection of Penfield Road and Nine Mile Point Road.

A law suit has been brought against the Town of Penfield claiming that the present zoning ordinance is discriminatory and unconstitutional.

Although racial bias may be a factor, much of the concern over moderate income housing centers around the economic issues of who pays for schools, sewers, etc. and the impact on property values.

EXHIBIT A

APPENDIX C
(Cont.)
T A B U L A T E D
Q U E S T I O N N A I R E

PLACE A CHECK MARK IN THE BOX INDICATING THE EXTENT TO WHICH YOU AGREE OR DISAGREE WITH THE STATEMENT

Number of replies
Percent of replies

	Not Answering	Agree Strongly	Agree	No Opinion	Disagree	Disagree Strongly	
1. Decent housing is the right of every citizen.	19	248	366	22	102	54	No.
	2	31	45	3	13	7	%
2. All families should have a choice of housing regardless of their income level.	24	107	263	25	247	145	No
	3	13	32	3	30	18	%
3. A shortage of low and moderate income housing exists in Monroe County.	13	176	350	170	87	15	No
	2	22	43	21	11	12	%
4. Moderate income housing is primarily needed by minority group families.	18	41	235	76	317	64	No
	2	5	29	9	46	8	%

EXHIBIT A

5. Housing is an economic issue-racial discrimination and civil rights are not part of the problem.	13	152	301	37	229	79	No
	2	19	37	5	28	10	%
6. I would be more favorable toward an apartment house or town house project in my neighborhood if I knew the new residents had the same economic educational, and occupational background as my neighborhood now has.	16	91	304	83	217	100	No
	2	11	37	10	27	12	%
7. I would be more favorable toward an apartment house or town house project in my neighborhood if I knew the residents would be contributing their "fair share" to finance such town services as schools, sewers, roads, etc.	16	278	320	23	20	34	No
	2	34	47	3	10	4	%
8. Penfield has the responsibility to help alleviate the shortage of moderate income housing in Monroe County.	17	100	297	71	190	136	No
	2	12	37	9	23	17	%

EXHIBIT A

9. The idea of living in a town house or condominium is appealing to me.

7	33	139	93	367	172	No
1	4	17	11	45	21	%

10. The idea of living in a town house or condominium would appeal to me when my family has grown up.

19	55	251	130	243	112	No
2	7	31	16	30	40	%

11. I approve of the federal government assisting a moderate income family in the purchase of a home by paying part of the interest cost of the mortgage.

15	50	168	43	275	261	No
2	6	21	5	34	32	%

OPINION INDEX	N/A	-110 -90	-85 -65	-60 -40	-35 -15	-10 +10	+15 +35	+40 +60	+65 +85	+90 +110
(NUMBER)	1	40	66	80	103	119	110	205	60	27
(PERCENT)	0	5	8	10	13	15	14	25	7	3

EXHIBIT A

	Not Answering	Agree Strongly	Agree	No Opinion	Disagree	Disagree Strongly	
12. It is desirable to have communities which are a residential mix containing high, moderate and low income single family dwellings and moderate and low income multiple dwellings.	31	78	270	78	239	115	No
	4	10	33	10	29	14	%
13. I approve of tax abatement of local property taxes to provide moderate income housing in Penfield.	47	26	130	80	259	269	No
	6	3	16	10	32	33	%
14. Most people I know feel that when minority group families move into a neighborhood there follows a downgrading of neighborhood property values.	35	134	371	71	158	42	No
	4	17	46	9	20	5	%

EXHIBIT A

	Not Answering	Agree Strongly	Agree	No Opinion	Disagree	Disagree Strongly	
15. Most people I know feel that when moderate income groups move into a neighborhood there follows a downgrading of neighborhood appearance and property values.	33	55	200	123	355	45	No.
	4	7	25	15	44	6	%
16. I would not object to the presence of moderate income dwellings withing 1/4 mile from where I now live (visible from present residence)	32	63	277	51	239	149	No.
	4	8	34	6	29	18	%
17. I would not object to the presence of moderate income dwellings withing 1/2 mile from where I now live (would pass by them frequently)	35	67	336	62	191	120	No.
	4	8	41	8	24	15	%

EXHIBIT A

	Not Answering	Agree Strongly	Agree	No Opinion	Disagree	Disagree Strongly	
18. I would not object to the presence of moderate income dwellings within 1 mile from where I now live (would pass by them occasionally).	33	78	431	61	116	92	No.
	4	10	53	8	14	11	%
19. Private builders can economically build and sell moderate income housing without government subsidy (money).							No.
	NOT TABULATED						%
20. The recently announced UDC plan to build 350 low and moderate income apartments and town houses near Penfield Road and Nine Mile Point Road is a step in the right direction.	36	71	244	128	186	166	No.
	4	9	38	16	20	20	%

EXHIBIT A

	Not Answering	Agree Strongly	Agree	No Opinion	Disagree	Disagree Strongly	
21. There is no shortage of moderate income housing in Penfield.	37	33	141	169	307	124	No.
	5	4	17	20	38	15	%
22. I approve of tax abatement of local property taxes to provide moderate income housing in Penfield for the elderly.	17	133	386	54	140	81	No.
	2	16	48	7	17	10	%
23. The shortage of moderate income housing for factory workers is one of the reasons some corporations have left the Rochester area.	NOT TABULATED						No. / %
24. The only way moderate income housing could be built in Penfield is to modify the zoning ordinance to permit a greater number of dwelling units per acre.	NOT TABULATED						No. / %

EXHIBIT A

	Not Answering	Agree Strongly	Agree	No Opinion	Disagree	Disagree Strongly	
25. The Planning and Zoning Boards are obliged to enforce strict zoning laws in order to protect the property values of the existing property owners.	12	265	350	53	108	23	No.
	1	33	43	7	13	3	%
26. It would be a good idea for the town to formulate plans and take actions which would provide moderate income housing of the type and in the locations which best serves the progress of the town.	27	147	436	59	85	57	No.
	3	18	54	7	10	7	%

EXHIBIT A

	Not answering	Agree Strongly	Agree	No Opinion	Disagree	Disagree Strongly	
27. Senior citizens and young families are usually found in moderate income brackets.	NOT TABULATED						No.
							%
28. Most Penfield residents I know would oppose any moderate income housing projects.	28	74	212	207	267	23	No.
	3	9	26	26	33	3	%
29. Property taxes are the best way to finance schools, roads, etc.	26	29	189	112	244	210	No.
	3	4	23	14	30	26	%
30. What alternative to the property tax would you suggest?	NOT TABULATED						No.
							%

EXHIBIT A

Not Answering

CIRCLE THE SELECTED ANSWER

31. How long have you lived in Penfield?
26/3 a) Less than 1 year 20/3 b) 1-5 years 205/25 c) more than 5 years 557/69

32. How long do you expect to live in Penfield?
59/7 a) Less than 1 year 28/3 b)1-5 years 109/13 c) More than 5 years 615/76

33. What is your sex?
54/7 a) Male 390/49 b)Female 360/45

34. How old are you?
34/4 a) 18-25 62/8 b) 26-35 148/18 c) 36-45 218/27 d) 46-55 205/25 e) 56-65 93/11 f) 66 or older 50/6

35. The moderate income range lies between ($/yr.):
81/10 a) $ 2,000-$7,000 25/3 b) $3,000-$ 8,000 63/8 c) $5,000-$10,000 226/28 d) $7,000-$12,000 234/29 e) $3,000-$13,000 27/3 f) $7,000-$10,000 156/19

EXHIBIT A

36. What type of dwelling to you and your family reside in ?

28/3 a) Apartment 30/4 b) Town House 7/1 c)Private Home 709/88 d) Mobile Home 34/4 e) Other 2/0

37. Does your family own or rent present dwelling?

30/4 a) Own (includes mortgaged homes) 731/90 b) Rent or Lease 47/6

38. How many members of your immediate family are under age 18?

32/4 a) 0 279/34 b) 1-2 293/36 c) 3-4 167/21 d) 5 or more 40/5

39. Where does the principle wage earner in your family work?

111/14 a) Penfield 63/8 b) Webster 104/13 c) Other town in Monroe County 95/12 d) City of Rochester 422/52 e) Outside Monroe County 16/2

40. Do you feel that more housing should be available in the Town of Penfield for:

107/13 Senior Citizens? a) yes 607/75 b) no 95/12

148/18 Young Families? a) yes 523/64 b) no 140/17

177/22 Minority Groups? a) yes 345/43 b) no 289/37

142/18 Moderate income industrial and public service workers a) yes 513/63 b) no 156/19

EXHIBIT A

41. Do you feel that you understand the main issues related to housing in the Town of Penfield?

57/7 a) yes 556/69 b) no 197/24

42. Would you attend a public meeting to obtain more information and express your views?

a) Yes b) No

NOT TABULATED

EXHIBIT A

MONROE COUNTY PLANNING COUNCIL

TEN YEAR HOUSING TARGETS FOR MONROE COUNTY

Monroe County should construct 80,000 new housing units between now and 1980. Some 55,000 of these are necessary to accommodate our growing population while the additional 25,000 are needed to replace existing housing which is either substandard already or bound to become so over the next 10 years. Of these 80,000 units, about 52,000 - 60,000 need to be for low and moderate income households, those earning $11,000 per year or less for a family of four.

Housing Needed for Growth

There are currently 228,554 housing units in Monroe County serving a population of 711,917. The calculation for growth is based upon finding the number of housing units necessary for a 1980 projected population of 817,500 after accounting for persons living in group quarters and institutions and changing household sizes. The 1980 population estimate is that derived for Monroe County by the State Office of Planning Coordination in 1966 as part of a statewide effort. These estimates were revised in 1969; but in the opinion of the staff, the earlier work was better. The 1969 estimate by this state office was 807,300 so the higher estimate at least ensures meeting the lower as well. Both projections are well

EXHIBIT A

under our own figures developed in 1962 which projected a 1980 population of 867,800. For the past five years we have been using instead the low estimates which range between 810,000 and 820,000..Thus, the 817,500 used in this exercise is quite reasonable.

Take 1970 population	711,917
Subtract inmates in institutions	7,345
Subtract persons in group quarters	12,231
Remainder is persons in housing units	692,341
Divide by 1970 occupied housing units	220,554
Result is persons per occupied housing unit - 1970	3.14

Since average household size is expected to decline from 2.7 to 2.5 in the next ten years, adjust the persons per occupied housing unit figure accordingly. Thus, in 1980, the population per occupied housing unit is estimated at 2.91.

Take projected 1980 population	817,500
Assume 1.03% are inmates	8,420
Assume 1.71% live in group quarters	13,979
Remainder is projected persons in housing units	795,101
Divide by 2.91 persons per occupied housing unit	2.91
Result is number of occupied housing units by 1980	273,230

Require a 3.5% vacancy rate for market flexibility	9,560
Total housing units needed in 1980	282,790
Total housing units existing in 1970	228,554
Needed additional housing units for growth	54,236

Housing Needed to Replace Existing Sub-Standard Stock

In addition to building for growth, we must also replace the existing housing stock that is substandard. The report of the Rochester Center for Governmental and Community Research assumed that a reasonable estimate could be made by adding together all the dilapidated housing plus all the deteriorating housing which also lacks some plumbing facilities plus one-third of the deteriorating housing which still has all plumbing facilities. These terms were defined and used by the 1960 census. The 1960 figures for Monroe County were thus:

Dilapidated	3,833
Deteriorating and lacking some plumbing	2,792
1/3 of Deteriorating with all plumbing	4,788
	11,413

Unfortunately, the 1970 census does not use these definitions of housing quality. Instead, it measures various indices of quality, such as presence or

absence of various facilities, and leaves it to the user to define the categories of substandardness. The Research Center simply assumed that the 1960 figure was at least constant and used it as the 1968 estimate. Past history indicates that the rate of deterioration is 0.26% annually. Thus, between 1960 and 1970, 482 units per year became substandard. Since this just about equals the demolition of existing units in the County, housing is becoming substandard at the same rate that sub-standard housing is being demolished. As a result, the assumption by the Research Center seems quite reasonable as an assessment of the amount of existing housing stock which requires replacement.

To these 11,413 units should be added another 1,000 units for the relief of overcrowding. Again, the assumption that overcrowding is as serious in 1970 as it was in 1960 is a reasonable one; the 1970 census states that there are 9,879 housing units in Monroe County with greater than 1.01 persons per room, while the 1960 census showed 9,966 such units.

Housing Needed to Replace Existing Standard Housing Which Will Either Become Substandard or be Demolished over the Next 10 Years

As noted above, housing has been deteriorating at the rate of 0.26% per year. However, accelerated construction of a public nature, urban renewal and highway construction for instance, lead one to believe that this figure should be increased

somewhat. Another reason for doing this would be the observation that the housing stock is comparatively old. Over 50% of the stock is over 40 years old for instance. Thus, an ongoing replacement rate of 0.5% annually would be a decent estimate for this factor. This would call for 12,800 such units over the next 10 years.

Summation

In summary, the components of the 1980 housing targets are:

Units needed for growth	54,236
Units to replace existing substandard units	11,413
Units to relieve over-crowding	1,000
Units to replace existing units becoming sub-standard or being demolished	12,800
Total need between 1970 and 1980	79,449

To round off, say 80,000 units are needed; 55,000 for growth and 25,000 for replacement. If all of the replacement units and between 50-65% of the growth is required for low and moderate income families, then 52,000 to 60,000 of these 80,000 units should be directed at that market.

APPENDIX E

Excerpts From

The 1970 Census of Population and Housing

1. Penfield population: 23,782

2. Housing Units: 7,039

3. Age of population:

Under 5 -	2076
5 - 14 -	5770
15 - 24 -	3113
25 - 34 -	3096
35 - 44 -	3477
45 - 54 -	3038
55 - 64 -	1788
65 + -	1364

4. Population by race:

White -	23625
Negro -	60
Oriental-	71
Indian -	16
Other -	10

5. Housing Units:

Owner occupied:	5681
Renter occupied:	1190
Vacant:	168

6. Housing Units:

One unit structures:	5123
Two + unit structures:	1110
Mobile homes:	800

EXHIBIT A

APPENDIX E (Cont'd)

7. Population Owner-Renter:
   In owner occupied units: 20,653
   In renter occupied units: 3,080

8. Value of owner occupied units:

Less than $5,000	-	8
$5,000-$9,999	-	34
$10,000-$14,999	-	71
$15,000-$19,999	-	272
$20,000-$24,999	-	857
$25,000-$34,999	-	1860
$35,000-$49,999	-	1199
$50,000 Or more	-	261

Note: Total of above is 4562 units. Mobile homes are not included; nor are homes with business or medical offices on the property.

9. Cost of renter occupied units:

Cash Rent		No. Units
$99./mo or less	-	92
$100-$119/mo.	-	65
$120-$149/mo.	-	95
$150-199/mo.	-	567
$200-299/mo.	-	265
$300 & up	-	12
No cash rent - (?)		43

Total: 1139

EXHIBIT A

APPENDIX E

Distribution of housing units in Moore County (Rtn) Source: 1970 census data

	Moore County	Moore County (Excludes City)	Pinehurst	Southern Pines	Aberdeen	Carthage	Cameron	Foxfire	Jackson Springs	Pinebluff	Robbins	Taylortown	Vass	Whispering Pines	Whitehall	Whitehall (City)
LOW (UNITS)	20,676	3,127	92	97	1,241	126	132	115	364	95	96	465	96	99	368	138
MODERATE (UNITS)	25,974	25,625	1,350	1,241	1,364	359	3,032	7,159	455	1,227	1,222	5,057	870	423	1,935	833
HIGH (UNITS)	91,796	80,019	5,819	10,163	3,239	373	5,229	13,190	312	4,491	6,911	15,691	1,724	498	5,825	1,415
PERCENT OF TOTAL UNITS INCLUDED	98	92	91	93	92	78	94	95	70	93	93	96	85	72	90	84
TOTAL NUMBER OF HOUSING UNITS	323,847	122,538	7,033	12,315	5,196	1,940	7,521	22,411	1,227	8,959	8,959	30,007	3,157	1,413	9,057	2,928
LOW (PERCENT)	9	3	1	1	1	11	1	2	8	1	1	2	1	7	4	5
MODERATE (PERCENT)	39	24	19*	10	27	33	26	32	37	15	15	25	27	30	21	28
HIGH (PERCENT)	40	65	71	82	63	34	67	61	25	77	77	69	55	55	65	51

	Ruskin	Sweden	Westsyde	Wheatland	Richfield (City)
LOW (UNITS)	87	17	175	133	17,246
MODERATE (UNITS)	161	930	1,945	454	57,225
HIGH (UNITS)	412	1,293	4,491	433	11,247
PERCENT OF TOTAL UNITS INCLUDED	75	85	90	81	84
TOTAL NUMBER OF HOUSING UNITS	879	2,800	6,913	1,227	115,501
LOW (PERCENT)	10	7	2	10	17
MODERATE (PERCENT)	18	33	21	36	56
HIGH (PERCENT)	47	45	67	35	11

NOTES:
- ALL PERCENT ARE PERCENT OF TOTAL HOUSING UNITS. (PERCENT OF LOW+MOD+HIGH IS NOT EQUAL TO 100%) THIS IS BECAUSE NOT 100% OF TOTAL HOUSING UNITS WERE ENUMERATED EXCLUSIONS INCLUDE CERTAIN NON-RESIDENTIAL-USE BUILDINGS AND SOME FARMS.
- "LOW" INCLUDES OWNER VALUE BELOW $10,000. AND RENTAL BELOW $80. PER MONTH.
- "MODERATE" INCLUDES OWNER VALUE FROM $10,000 TO $20,000. AND RENTAL FROM $80. TO $150. PER MONTH.
- "HIGH" INCLUDES OWNER VALUE ABOVE $30,000. AND RENTAL ABOVE $150. PER MONTH.
- * PINEHURST MODERATE WOULD BE 550 UNITS OR 8 PERCENT IF TRAILERS (MOBILE HOMES) EXCLUDED.
- MOBILE HOMES ARE ASSUMED TO FALL IN MODERATE CATEGORY. THEY WERE NOT ENUMERATED BY VALUE OR RENTAL IN CENSUS DATA.

EXHIBIT A

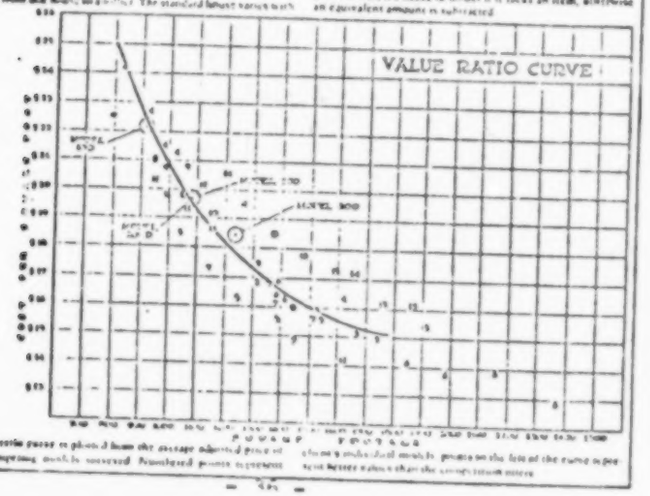
APPENDIX H

Cost of Extra Features

Value Ratio Curve

Standard Features	Features Below Standard	Dollar Amount Added To Sales Price	Features Above Standard	Dollar Amount Subtracted From Sales Price
Concrete Driveway	Asphalt Driveway	$100	N.A.	N.A.
Front Lawn or Landscaping	No Lawn or Landscaping	$150	Back Lawn or Landscaping	$150
Front Sprinklers	No Sprinklers	$150	Back Sprinklers	$150
Partial Carpeting	No Carpeting	$400	Complete Carpeting	$250
One Fireplace/ Home	No Fireplace	$650	Two or More Fireplaces	$650 each
Wood Shake or Shingle Roof	Composition Roof	$750	Tile Roof	$500
Dishwasher	No Dishwasher	$200	N.A.	N.A.
Two Car Garage	One Car Garage	$800	Three or More Car Garage	$800 each
	Two Car Carport	$410		
	One-Car Carport	$1,600		
6,000 Square Foot Lot Size	Less than 6,000 Square Foot Lot Size	$0.75/ Square Foot	More than 6,000 Square Foot Lot Size	$0.75/ Square Foot
2 Baths of Home Less Than 2,000 Square Feet	1½ or Fewer Baths	$450/½ Bath $800/Full Bath	2½ or More Baths	$450/½ Bath $800/Full Bath
3 Baths of Home 2,000 or More Square Feet	2½ or Fewer Baths	$450/½ Bath $800/Full Bath	3½ or More Baths	$450/½ Bath $800/Full Bath
No Air Conditioning	N.A.	N.A.	Air Conditioning Evaporative Cooling	$1,300
No Drapes	N.A.	N.A.	Partial Drapes	$250
			Complete Drapes	$500
Single Oven	N.A.	N.A.	Double Oven	$200
No Self-Cleaning Oven	N.A.	N.A.	Self-Cleaning Oven	$100
No Patio	N.A.	N.A.	Patio	$200
No Wet Bar	N.A.	N.A.	Wet Bar	$400
No Fencing	N.A.	N.A.	Fencing	$450
No Bonus Area	Unfinished Bonus Area	$3,000	N.A.	N.A.
	Partially Finished Bonus Area	$500		

Adjusted price analysis sheets lists many common features that vary from one home to another. The standard house varies with price dollars are added to or subtracted from sales price as an item, whichever an equivalent amount is subtracted.



Value ratio curve is plotted from the average adjusted price of all comparable models surveyed. Plotted points represent

shows a model that models greater on the left of the curve is per- cent better value than the comparison model

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EXHIBIT A

APPENDIX H

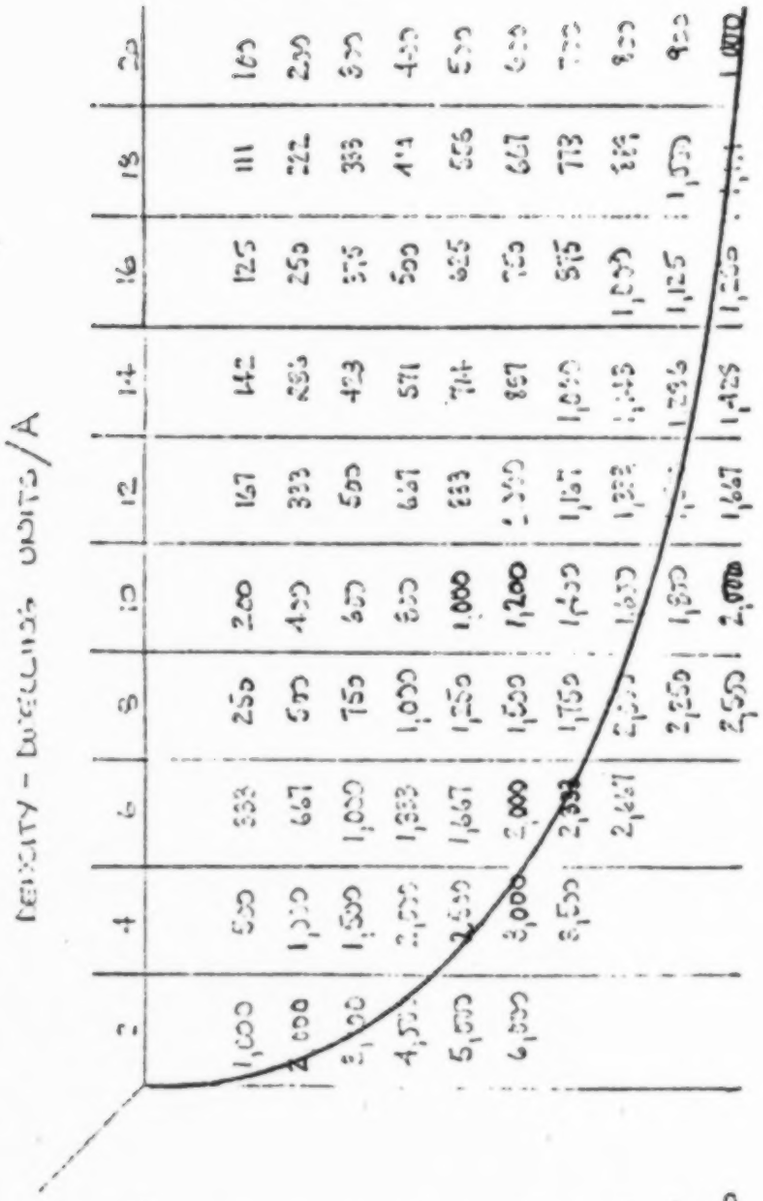

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EXHIBIT A

LAND DEVELOPMENT ANALYSIS

DEVELOPMENT COST / DWELLING UNIT

$/A INCL. ALL FEES & ENGINEERING	DENSITY - DWELLING UNITS/A									
	2	4	6	8	10	12	14	16	18	20
2000	1,000									
4000	2,000	1,000								
6000	3,000	1,500	1,000							
8000	4,000	2,000	1,333	1,000						
10,000	5,000	2,500	1,667	1,250	1,000					
12,000	6,000	3,000	2,000	1,500	1,200	1,000				
14,000	7,000	3,500	2,333	1,750	1,400	1,167	1,000			
16,000	8,000	4,000	2,667	2,000	1,600	1,333	1,143	1,000		
18,000	9,000	4,500	3,000	2,250	1,800	1,500	1,286	1,125	1,000	
20,000	10,000	5,000	3,333	2,500	2,000	1,667	1,429	1,250	1,111	1,000
22,000	11,000	7,000	3,667	2,750	2,200	1,833	1,571	1,375	1,222	1,100
24,000	12,000	8,000	4,000	3,000	2,400	2,000	1,714	1,500	1,333	1,200

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EXHIBIT A

APPENDIX I

Penfield Zoning Ordinance, Housing Section Summary

District	Uses	Accessory Uses	Area of Structure	Minimum Size Lots	Yards	Parking	Height
Residential AA District	1 family dwelling, churches, schools, parks, playgrounds, conservancy & lodges (not to exceed 2), cemetery, agricultural operations, public library, municipal buildings	private garage, professional office, (when part of the personal residence)	not less than: 1500 sq ft (1 story) 1400 sq ft (1½ story) 1500 sq ft (2 story)	at least: 110 ft width 200 ft depth 20,000 sq ft, except corner lots Note (1)	front yards (see Note 2) interior side and rear lot lines no less than 10 ft	-	-
Residential A District	all uses permitted in AA District except boarding & lodging not to exceed 4	same as AA District	not less than: 1000 sq ft (1 story) 1200 sq ft (1½ story) 1300 sq ft (2 story)	at least: 100 ft width 150 ft depth 15,000 sq ft, except corner lots Note (2)	same as AA District	-	-
Apartments or multiple dwellings	apartment houses, multiple dwellings	-	500 sq ft (efficiency) 600 sq ft (1 bedroom) 800 sq ft (2 bedrooms) 950 sq ft (3 bedrooms) Density not to exceed 12.4 living units per acre	3500 sq ft for each apt living unit structure not to exceed 25% of the area of the lot	no nearer to streets than Paths of bldg., no nearer than 80 ft in any case, Note (4)	1½ spaces per living unit, 1 of which must be in an enclosed garage	-
Town Houses	Town Houses	private parage, swimming pool, parks, playgrounds & play areas incl. structural facilities incidental to recreation area, maintenance buildings	Density not to exceed 9 dwelling units per acre. Buildings can occupy no more than 27% of gross acreage. Each unit must contain at least 1200 sq ft of habitable area.	must have at least 20 ft frontage	Front yards no nearer than 50 ft to center line on private streets on which it fronts, no nearer than 60 ft to center line on public road in accordance with Zoning Note (5)	2 spaces per dwelling unit, 1 of which must be enclosed & covered	not to exceed 35 ft
Trailer Parks	All uses permitted as in residential A District, subject to all the conditions and uses permitted in such A District	such commercial uses as may be necessary to the operation of a trailer park, must be approved by the Zoning Board of Appeals	-	No addition to any trailer park shall be constructed within 250 ft of the line of any residential district of which area & 50 ft strip immediately adjoining said residential district shall be maintained as a landscaped buffer area.	-	-	

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EXHIBIT A

APPENDIX I
(contd.)

NOTES

1. Corner lots (AA): Width - 125 ft
Depth - 200 ft
Area - 25,000 sq.ft.

2. No structure nearer than:

108 ft. from center line of highway (certain main streets)
90 ft. - other main streets
83 ft. - all other streets (see section 29-10 - zoning ordinance)

3. Corner lots (A): Width - 125 ft.
Depth - 150 ft.
Area - 18,750 sq.ft.

4. Yards - Apartments or Multiple Dwellings: No structure in excess of 3 stories shall be nearer than 20 ft. to any interior side or rear lot line.

No structure from 4 to 6 stories inclusive shall be nearer than 30 ft. to any interior side or rear lot line.

No structure 7 stories or more in height shall be nearer than 40 ft. to any interior side or rear lot line.

EXHIBIT A

APPENDIX I
(contd.)

5. Town Houses - Side Yards: Setback of 35 ft. required from center line of a private road.

Setback of 60 ft. required from center line of a public road.

Side yard setback of at least the height of highest adjacent building and no less than 20 ft. required between building groups.

Town Houses - Rear Setback: At least 30 ft. setback from any other structure or external boundary line.

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EXHIBIT A

District	Uses
Planned Unit Development	Variety of residential types and non-residential uses. Contains both individual building sites and common property which are planned and developed as a unit. (a planned neighborhood)

APPENDIX I
(cont.)

Area of Structures

Minimum Area: 100 acres of contiguous land

Residential Uses: May be of any type. Must be a variety as follows:

Requirements	Type	Minimum	Square feet
Minimum - 10% by acreage	single family detached	1 story	1100
		1½ story	1400
		2 story	1500
Minimum - 15% by acreage	single family detached	1 story	1000-1100
		1½ story	1200-1300
		2 story	1350-1500
Minimum - 7 ½ by acreage	single family detached or double houses *	1 story	850-900 single fac-ing detached
		1½ story	1000-1150
		2 story double	1150-1250 900
Maximum - 30% by acreage	single family detached **	1 story	850-1000
		1½ story	1050-1200
		2 story	1150-1300
Maximum - 27%	may contain multiple dwelling		
Minimum - 10%	must be set aside for recreational use		
Maximum - 2%	accessory commercial and service usage (see Note f)		

* Average density not to exceed 4 dwelling units per acre.

** Average density not to exceed 3 dwelling units per acre. No structure nearer than 6 ft to interior side or rear lot line.

SEE NOTES FOR ADDITIONAL PUD REQUIREMENTS

EXHIBIT A

APPENDIX I
(contd)

NOTES - PLANNED UNIT DEVELOPMENT (PUD)

a) Horizontal Structures - including garages shall not occupy more than 20% of the land allocated to the multiple dwelling portion of the PUD.

b) Parking - Each dwelling must have (2) adequate parking spaces, (1) of which shall be an enclosed garage.

c) Average Density - 9 dwellings per acre for town houses,
12 dwellings per acre for apartments.

d) Distance between multiple unit buildings - not less than height of tallest building.

e) Front Set Back -

State, county, major town roads - 100 ft. from highway line

Internal subdivision feeder & collector streets - 50 ft. from street line

Totally internal streets - 30 ft. from street line

EXHIBIT A

APPENDIX I
(cont.)

f) Accessory Commercial and Service Uses - For those developments in excess of 100 acres, commercial and service uses of not over 2% of the total acreage are permitted (where such services are scaled primarily to serve the needs of the PUD).

g) Customary Accessory or Associated Uses - such as private garages, storage spaces, recreational and community activities, churches, and schools shall be permitted or required as appropriate to the PUD.

EXHIBIT A

APPENDIX J

ESTIMATE OF HOUSING COSTS IN PENFIELD'S PROPOSED P.U.D.s

All builders interviewed emphasized the point that none of their price quotations were "carved in stone". Every day of delay forces prices higher.

WILLOW POND PUD - Standco

104 acres 5 Units per acre. 518 Units

Low	High	Type	Sale or rent	Cost
80		Elderly	Rent	$43.00 mo. (sub.)
	44	Town houses	Sale	low 20s
	48	Town houses	Rent	??
	12	Garden Apts. (1 B.R.)	Rent	$160-$200 mo.
	121	Garden Apts. (2+B.R.)	Rent	$200-$300 mo.
	134	Duplexes	Sale	mid 20s
	12	O Lot line	Sale	mid 20s
	17	Single-A	Sale	$27,000-$35,000
	50	Single-B-C	Sale	$25,000-$30,000
80	438			

EXHIBIT A

APPENDIX J (cont.)

BEACON HILLS - J.Audino

97 acres 3.13 units per acre 313 units

313 { 161 Singles { 134 above $25,000 { 10% AA / 16% A
313 { 161 Singles { * 27 - $22,130-$24,900 7% (840-1000 sq.ft.- 2-B.R.some expandible)
313 { 152 Quadraplexes - rental only - $200 mo. and up

*7% of 97=6.79 x 4 units per a. = 27 homes. (These homes were originally planned for around $19,800 - $22,000 when 378 units were allowed. $172.90 a month would have carried one of these. The $24,900 home would now cost $189.85 a month (including $50 taxes) with a conventional mortgage.

EXHIBIT A

APPENDIX J (contd)

ROCK LAKE - J. Odenbach

168 acres 4.68 units per acre. 784 units

Open hearing of the Planning Board - March 22, 1971

AA-2 per acre	- 37	
A -3 per acre	- 76	
B -3 per acre	- 106	
C -4 per acre	- 90	
Town houses	- 136	(2-3 B.R.)
Apartments	- 336	(1-2 B.R.)
	781	

No specific costs were mentioned. Homes would range from the low 20s to the high 40s with "an effort to keep the mix toward the lower end".

Mr. Odenbach says that at the present density they cannot build the type of community they had planned, so they are virtually giving up the idea for the moment and are in no position to estimate costs of housing. Also the sewer problems would limit any ground breaking in the area till at least 1974.

EXHIBIT A

APPENDIX K

FHA - Sections 235, 236 Summary

INTEREST SUPPLEMENTS ON HOME MORTGAGES

A program to enable lower-income families to buy a home or a membership in a cooperative housing project

Nature of Program

HUD makes monthly payments to the mortgagee to reduce interest costs to as low as 1 percent on a home mortgage insured by the Federal Housing Administration. The homeowner must pay at least 20 percent of his adjusted monthly income on the mortgage. Amounts of subsidies vary according to the income of the individual homeowner and the total amount of the mortgage payment at the market rate of interest. Family income and mortgage limits are established for eligibility in each locality. Assistance may be provided for new or substantially rehabilitated homes and, in a limited number of cases, for existing homes without rehabilitation.

Applicant Eligibility

The applicant may be anyone whose income qualifies him for the subsidy aid.

Application is made to a lending institution approved by FHA as a mortgagee.

Information Source

HUD area office or HUD-FHA insuring office.

Legal Authority

Section 235, National Housing Act (Public Law 73-479), as added by the Housing and Urban Development Act of 1968 (Public Law 90-448).

Administering Office	Function
Assistant Secretary for Housing Production and Mortgage Credit—FHA Commissioner	Aid development and construction
Assistant Secretary for Housing Management	Management and loan servicing for multifamily projects

EXHIBIT A

INTEREST SUPPLEMENTS ON RENTAL AND COOPERATIVE HOUSING MORTGAGES

A program to reduce costs on certain rental and cooperative housing projects designed for occupancy by low-income families

Nature of Program

HUD makes monthly payments to mortgagees, on behalf of mortgagors, of a part of the interest on market-rate mortgages financing rental or cooperative housing projects for lower-income families. Interest-reduction payments may also be made on rental or cooperative housing projects owned by private nonprofit, limited-dividend, or cooperative entities which are financed under a State or local program providing assistance through loans, loan insurance, or tax abatement.

Interest-reduction payments cannot exceed the difference between the amount required for principal, interest, and mortgage insurance premium on a market-rate mortgage and the amount required for principal and interest on a mortgage at 1 percent interest. The purpose of the payments is to bring the monthly rental charges down to a level that low-income families can afford to pay with at least 25 percent of their adjusted monthly income.

Applicant Eligibility

Applicants for mortgages insured by the Federal Housing Administration and for interest-reduction payments may be nonprofit, limited-dividend, and cooperative entities.

Applications for insured mortgages are made to lending institutions approved by FHA as mortgagees.

Applications for interest-reduction payments where no FHA insurance is involved are made directly to the local FHA insuring office.

Information Source

HUD area office or HUD-FHA insuring office.

Legal Authority

Section 236, National Housing Act (Public Law 73-479), as added by the Housing and Urban Development Act of 1968 (Public Law 90-448).

Administering Office	Function
Assistant Secretary for Housing Production and Mortgage Credit—FHA Commissioner	Aid development and construction
Assistant Secretary for Hous-	Management and loan servicing

EXHIBIT A

APPENDIX L

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
BUFFALO AREA OFFICE
560 MAIN STREET
BUFFALO, NEW YORK 14202

SECTION 235 REGULATIONS

To assist lower income families in acquiring homeownership through reduced interest cost.

Minimum Interest - 1%
Maximum Interest - 7%

Maximum Term - 32 years (35 to 40 upon special authorization).

Miminum Term - 25 years, or 75% of remaining economic life of property.

Maximum Mortgage Amount - See Schedule A for Mortgage Amounts in your locality.

Eligible Properties

1. New or substantially rehabilitated single family dwellings approved by HUD prior to construction or rehabilitation.

2. Rehabilitated two-family dwelling to be owner-occupied, approved by HUD prior to rehabilitation.

3. One-family unit in a condominium, completed within past two years, (project must have been HUD insured if more than 11 units).

EXHIBIT A
APPENDIX L (Cont'd)

4. An existing family dwelling or a family unit in an existing condominium which is to be occupied by a mortgagor of one of the following types:

   a) A family displaced by Government action or major disaster.

   b) A family moving from low-rent public housing.

   c) A family with 5 or more minor persons living in the household.

5. Existing dwelling without regard to 1 through 4 above, limited to the availability of funds.

Refinancing transactions ineligible.

Sales price control - Property may not be sold to the purchaser for more than HUD Estimate of Value (including closing costs)

Minimum Investment - $200.00 may be applied to pre-payable expenses.

Eligible Mortgagors

1. Family of two or more persons related by blood, marriage or operation of law who occupy the same unit.

2. A handicapped person (physical impairment which is expected to be of a long, continued and indefinite duration).

EXHIBIT A
APPENDIX L (Cont'd)

3. Single person 62 years or age or older.

Mortgage Income Limits

1. Regular adjusted family income - See Schedule B.
   Adjusted family income is calculated as follows:

   (Gross income of all working members of the family excluding temporary overtime), less 5% (allowance for Social Security, withholding, etc.) and less $300 for each minor child living in the household.)

Asset Limitations

1. Mortgagor UNDER Age 62* - $2,000.

2. Mortgagor OVER Age 62* - $5,000.

** PLUS $500 for each dependent child, plus applicant's share of mortgage payment. Auto and furniture not considered.

Assistance Payment - Lesser of the two:

1. The difference between the total monthly payment (mortgage insurance premium, principal, interest 7%, taxes, hazard insurance) and 20% of the mortgagor's adjusted monthly income.

2. The difference between the monthly payment, principal, interest 7%, and mortgage insurance premium under the mortgage and the monthly payment to the principal and interest that

EXHIBIT A
APPENDIX L (Cont'd)

would require an interest rate of 1%, excluding HUD premium.

Re-Certification of Income - Minimum every two years.

Application Fee - $40 Existing.
$50 Proposed.

How to Apply for Section 235 Mortgage Insurance:

1. Outstanding Conditional Commitment issued under Section 203(b) or Section 221(d)(2) may be converted to Section 235 Firm Commitments.
2. Approved mortgagees will submit application, Form 2900, with the usual exhibits and Form 3100, Application for Home Ownership Assistance under Section 235.

SPECIAL NOTE: Builders or sellers who anticipate the sale of homes under Section 235 may request the reservation of interest subsidy funds from this Office.

EXHIBIT A

SCHEDULE A.

MORTGAGE LIMITS.

LOCALITY	1-Family	2-Family
BUFFALO - Base City includes City of Buffalo, Grand Island, Counties of Erie, Wyoming, Orleans, Alleghany, Niagara and Genesee.	$21,000*	$30,000
ROCHESTER - Base City includes City of Rochester, Counties of Monroe, Wayne, Livingston, Ontario, Seneca and Yates.	$21,000*	$30,000
ELMIRA - Key Area includes Cities of Corning, Elmira and Counties of Stueben, Schuyler and Chemung.	$21,000*	$30,000
JAMESTOWN - Base City includes City of Jamestown, Counties of Chautauqua and Cattaraugus.	$19,500	$27,000

**Single family limits can be increased up to a maximum of an additional $3,000 on an individual case basis for homes of 4 or more bedrooms and five or more persons.

EXHIBIT A

SCHEDULE B

ADJUSTED FAMILY INCOME LIMITS

COUNTY OR LOCALITY	NUMBER OF PERSONS IN FAMILY									
	1	2	3	4	5	6	7	8	9	10
Alleghany	5,265	6,075	6,885	7,290	7,695	8,100	8,505	8,910	9,180	9,450
Cattraugus	5,670	6,480	7,290	7,695	8,100	8,505	8,910	9,315	9,585	9,855
Seneca Nation	4,320	4,860	5,400	6,010	6,550	7,155	7,695	8,305	8,305	8,305
Chautauqua	4,860	5,670	6,480	7,020	7,425	7,900	8,305	8,775	8,775	8,775
Chemung	5,400	6,210	6,885	7,290	7,695	8,100	8,505	8,910	9,180	9,450
Elmira	5,350	6,240	6,535	6,835	6,980	7,130	7,425	7,725	7,725	7,725
Erie	5,995	6,480	7,290	8,335	8,335	9,545	9,545	10,225	10,495	10,735
Lackawanna	5,130	5,400	6,210	6,480	6,885	7,290	7,560	7,830	7,830	7,830
Genesee	5,265	6,480	7,155	7,695	8,235	8,775	9,180	9,585	9,585	9,585
Livingston	5,940	6,750	7,560	7,965	8,370	8,775	9,180	9,585	9,855	10,125
Monroe	5,670	7,020	7,560	7,965	8,505	9,180	9,855	9,990	10,125	10,395
Niagara	5,400	6,480	7,290	7,830	8,370	8,910	9,450	9,800	9,990	10,260
Ontario	6,075	6,885	7,695	8,100	8,505	8,910	9,315	9,720	9,990	10,260
Orleans	5,940	6,750	7,560	7,965	8,370	8,775	9,180	9,585	9,855	10,125
Schuyler	5,400	6,210	7,020	7,425	7,830	8,235	8,640	9,045	9,315	9,585

	1	2	3	4	5	6	7	8	9	10
Seneca	6,075	6,885	7,695	8,100	8,505	8,910	9,315	9,720	9,990	10,260
Steuben	5,130	5,940	6,750	7,155	7,560	7,965	8,370	8,775	9,045	9,315
Addison										
Campbell										
Corning										
Erwin										
Horby										
Lindly										
Wayne	5,940	6,750	7,560	7,965	8,370	8,775	9,180	9,585	9,855	10,125
Newark	5,130	6,750	7,290	7,695	8,100	8,505	8,010	9,315	9,315	9,315
Yates	5,400	6,210	7,020	7,425	7,830	8,235	8,640	9,045	9,315	9,585
Wyoming	5,345	6,345	7,155	7,560	7,965	8,370	8,775	9,180	9,450	9,720

Dated March, 1972

APPENDIX M

COMPARISON OF TAX RATE IMPACTS OF A HIGH DENSITY DEVELOPMENT AND A LOW DENSITY DEVELOPMENT ON A SCHOOL DISTRICT

To accurately determine the impact of a future residential development of any kind upon school taxes, one would require knowledge of all possible future changes in educational state aid formulas which largely determine the size of the local tax burden. Such knowledge, of course, does not exist. The only alternative available, therefore, is to estimate present tax impacts on the assumption that the residential development has already been built and that its children are already attending schools. In other words, what would this year's tax rate be if both a high density development, and an additional conventional development, had been built in the recent past?

The tax impact of any residential development with school children varies for three years until it reaches a point of stabilization. This is due to the present state aid formula system and the Monroe County Sales Tax distribtuion method which fully recognize additional full valuation and enrollment only two years after they have been added to a school district.

In the interim period the state aid formula provides a transitional "growth aid" for the first year and a similar amount for the second year resulting from the application of an adjusted aid ratio to increased

EXHIBIT A

APPENDIX M (Cont'd)

operating expenses eligible for aid. In the third year after the construction of a residential project the tax impact will stabilize because its full valuation then has been incorporated into the computation of the aid ratio for that year and its enrollment has been included in the distribution formula for the Monroe County Sales Tax.

The calculations on the following pages demonstrate in detail the fiscal effects of the addition of the two developments.

EXHIBIT A

APPENDIX M (Cont'd)

1. Computation of the Tax Base for a Low Density (1.75 unit/acre) Project.

a.	65 times $37,500 =	$ 2,437,500.00
b.	___ times $_____ =	$_____
c.	Sub total	$_____
d.	Minus present Full Value of site	$ 30,810.81
e.	Net increase in Full Valuation	$ 2,406,689.19
f.	Present Full Valuation of school district	$197,375,244.00
g.	New Full Valuation	$199,731,933.00

Computation of per pupil costs multiplier

a.	Total 1971-72 appropriations/ pupil	$ 1,647.79
b.	Minus principal and interest on debt service/pupil	$ 202.07
c.	Minus Operation and Maintenance of plant/pupil	$ 132.06
d.	Minus board of education expense/ pupil	$ 5.50
e.	Minus other/pupil	$_____
f.	Net cost per additional pupil	$ 1,308.16

Additional cost for 115 new pupils $ 150,438.40

EXHIBIT A

APPENDIX M (Cont'd)

2. Computation of the Tax Base for a High Density (9.5 units/acre) Project

a. ___ times $ ___ =	$	
b. 350 times $18,400 =	$	6,440.000.00
c. Sub total	$	
d. Minus present Full Value of site	$	30,810.81
e. Net increase in Full Valuation	$	6,409,189.19
f. Present Full Valuation of school district	$	197,325,244.00
g. New Full Valuation	$	203,734,433.00

Computation of per pupil costs multiplier.

a. Total 1971-72 appropriations/ pupil	$ 1,647.79
b. Minus principal and interest of debt service/pupil	$ 202.07
c. Minus Operation and Maintenance of plant/pupil	$ 132.06
d. Minus board of education expense/ pupil	$ 5.50
e. Minus other/pupil	$
f. Net cost per additional pupil	$ 1,308.16

Additional cost for 175 new pupils $,228,928.00

EXHIBIT A

APPENDIX M (Cont'd)

3. a. Average Full Value Tax Rate/1000 $ 22.98
   b. Equalization Rate $ .37
   c. Assessed Value Tax Rate/1000 Assessed $ 62.112

Tax Impact in 1971-72 if project had been completed by first quarter of 1971-72.

	Low Density Project	High Density Project
1. Growth Aid		
a. Actual 1971-72	$ -0-	$ -0-
b. New	$ 8,913.25	$ 38,624.10
c. Increase	$ 8,913.25	$ 38,624.10
2. 1971-72 Tax Impact		
a. Gross add. cost	$150,438.40	$228,928.00
b. Growth aid incr.	$ 8,913.25	$ 38,624.10
c. Net cost increase	$141,525.15	$190,303.90
d. Net change in Full Value Tax Rate	+.43 If on 71-72 rolls	+.21
e. Net change in assessed value. Tax rate/1000 assessed value	+1.17	+.594

EXHIBIT A

APPENDIX M (Cont'd)

Tax impact in 1971-72 if project had been completed by first quarter of 1970-71.

1. Aid ratio unchanged	0.571	0.571
2. Operating Expense Aid		
a. WADA for aid present	$ 6,050.35	$ 6,050.35
b. WADA for aid new	$ 6,165.35	$ 6,225.35
c. Operating exp.aid present	$2,971,084.87	$2,971.084.87
d. Operating exp. aid new	$3,027,556.77	$3,057.028.37
e. Aid increase	$ 56,471.90	$ 85,935.50
3. Building Aid. No change		No change
4. Transportation Aid		
a. Present	$ 289,881.99	$ 289,881.99
b. New	$ 295,391.82	$ 298,266.52
c. Aid increase	$ 5,509.83	$ 8,384.53
5. High Tax Rate Aid		
a. Present	$ 22,135.79	$ 22,135.79
b. New	$ 24,661.52	$ 22,135.79
c. Increase	$ 2,525.73	$ -0-

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EXHIBIT A

APPENDIX M (Cont'd)

6. 1971-72 Tax Impact		
a. Gross Addit. cost	$ 150,438.40	$ 228,928.00
-Op.aid incr.	$ 56,471.90	$ 85,935.50
-Tr.aid incr.	$ 5,509.83	$ 8,384.53
-High tax rate aid incr.	$ 2,525.73	$ -0-
b. Net cost increase	$ 85,930.94	$ 134,607.97
c.Net change in full Value	+.15	-.06
d.Net change in Assessed Value Tax Rate/ 1000 Assessed Value	+.405	-.162

Tax Impact in 1971-72 if project had been completed by first quarter of 1969-70.

	Low Density	High Density
1. Aid ratio		
a. Present	0.571	0.571
b. New	0.573	0.568

EXHIBIT A

APPENDIX M (Cont'd)

	Low Density	High Density
2. Op.Expense Aid.		
a. Present	$2,971,084.87	$2,971,084.87
b. New	$3,038,161.17	$3,040,958.97
c. Aid increase	$ 67,076.30	$ 69,874.10
3. Building Aid		
a. Present	$ 513,883.51	$ 513,883.51
b. New	$ 515,683.45	$ 511,183.50
c. Aid increase	$ 1,799.94	$ -2,699.91
4. Transportation Aid		
a. Present	$ 289,881.99	$ 289,881.99
b. New	$ 295,391.82	$ 298,266.52
c. Aid increase	$ 5,509.83	$ 8,384.53
5. High Tax Rate Aid		
a.Present	$ 22,135.79	$ 22,135.79
b.New	$ 34,787.86	$ 17,657.23
c.Aid increase	$ 12,652.07	$ -4,478.56
6. Additional Sales Tax allocation	$ 9,048.20	$ 13,769.00
7. 1971-72 Tax Impact.		
a. Gross Addit. cost	$ 150,438.40	$ 228,928.00
-Op.aid incr.	$ 67,076.30	$ 69,874.10

EXHIBIT A

APPENDIX M (Cont'd)

	Low Density	High Density
-Build. aid incr.	$ 1,799.94	$ -2,699.91
-Trans.aid incr.	$ 5,509.83	$ 8,384.53
-High tax rate aid	$ 12,652.07	$ -4,478.56
-Sales tax incr.	$ 9,048.20	$ 13,769.00
b.Net increase (surplus)	$ 54,352.05	$ 144,078.84
c.Net change in Full Value	-.01	-.02
d.Net change in Assessed Value Tax Rate/ 1000 Assessed Value	-.029	-.054

Summary

1971-72 Full Value Tax Rate Impacts

	Low Density Project	High Density Project
1st Year Project	+.43	+.21
2nd Year	+.15	-.06
3rd and Subsequent years	-.01	-.02

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EXHIBIT C

Population by Race
Monroe County, City and Towns
1960,1964, 1970

	Total Pop.	White	1960 Negro	Other
Monroe County	586,387	561,321	23,184	882
City of Roch.	318,611	294,383	23,586	642
Balance of County	267,776	266,938	598	240
Brighton	27,849	27,762	51	36
Chili	11,237	11,195	23	19
Clarkson	2,339	2,297	41	1
Gates	13,755	13,738	5	12
Greece	48,670	48,616	12	42
Hamlin	2,755	2,704	40	11
Henrietta	11,598	11,574	11	13
Irondequoit	55,337	55,277	34	26
Mendon	3,902	3,894	5	3
Ogden	7,262	7,247	6	9
Parma	6,277	6,227	44	6
Penfield	12,601	12,572	23	6
Perinton	16,314	16,299	8	7
Pittsford	15,156	15,134	16	6
Riga	2,800	2,781	16	3

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EXHIBIT B

U.S GOVERNMENT OUTLAYS FOR VARIOUS FUNCTIONS
BY FISCAL YEAR
(MILLIONS OF DOLLARS)

FUNCTION	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972*	1973*
555	155	170	198	37	81	391	478	948	871	1,280	1,243	1,674	2,066
550	191	589	-880	-185	288	2,644	2,616	4,076	1,961	2,965	3,357	4,039	4,844
ALL	97,795	106,813	111,311	118,584	118,430	134,652	158,254	178,833	184,548	196,588	211,425	236,610	246,257

* ESTIMATED

NOTES: ALL = TOTAL FEDERAL OUTLAYS FOR ALL PURPOSES
550 = TOTAL FEDERAL OUTLAYS FOR COMMUNITY DEVELOPMENT & HOUSING (INCLUDES HUD & OEO). NEGATIVE NUMBERS INDICATE INFLUENCE OF RECEIPTS FROM "MAINTENANCE OF HOUSING MORTGAGE MARKET (554)" AND DEDUCTIONS FOR OFFSETTING OTHER RECEIPTS.
555 = TOTAL FEDERAL OUTLAYS FOR LOW AND MODERATE INCOME HOUSING AIDS (INCLUDES SUBSIDIZED HOUSING PAYMENTS, SPECIAL ASSISTANCE, & REHABILITATION LOANS).

FY	TOTAL SUBSIDIZED NEW & REHAB. UNITS**	REVISED GOAL **
1969	191,600	198,000
1970	324,800	310,000
1971	530,000	505,000
1972	695,000	650,000

** SOURCE-"THIRD ANNUAL REPORT ON HOUSING GOALS", JUNE 29, 1971, U.S. GOVERNMENT PRINTING OFFICE

V.F. VINKEY
4/23/71

EXHIBIT 585

1964

	Total Pop.	White	Negro	Other
Monroe County	625,128	591,634	32,561	933
City of Roch.	305,849	273,509	31,751	589
Balance of County	319,279	318,125	810	344
Brighton	29,898	29,759	59	80
Chile	13,068	13,016	42	10
Clarkson	2,807	2,744	60	3
Gates	16,405	16,385	12	8
Greece	59,059	58,995	24	40
Hamlin	3,152	3,077	57	18
Henrietta	17,821	17,751	51	19
Irondequoit	60,704	60,711	53	40
Mendon	4,177	4,175	2	0
Ogden	9,399	9,379	7	13
Parma	8,350	8,294	43	13
Penfield	17,337	17,288	22	27
Perinton	20,416	20,393	9	14
Pittsford	18,962	18,922	16	24
Riga	3,209	3,191	18	0
Rush	2,840	2,703	130	7
Sweden	8,377	8,289	82	6

EXHIBIT 584

1960 (cont'd.)

	Total Pop.	White	Negro	Other
Rush	2,555	2,439	105	11
Sweden	7,224	7,186	37	1
Webster	16,434	16,406	10	18
Wheatland	3,711	3,590	111	10

EXHIBIT C 587

1970

	Total Pop.	White	Negro	Other
Monroe County	711,917	655,821	52,218	3,878
City of Roch	296,233	244,118	49,647	2,468
Balance of County	415,684	411,703	2,571	1,410
Brighton	35,065	34,453	370	242
Chili	19,609	19,417	138	54
Clarkson	3,642	3,575	60	7
Gates	26,444	26,280	104	58
Greece	75,136	74,704	227	205
Hamlin	4,167	4,093	58	16
Henrietta	33,017	32,259	594	164
Irondequoit	63,675	63,355	170	150
Mendon	4,541	4,534	5	2
Ogden	11,736	11,656	54	26
Parma	10,748	10,652	81	15
Penfield	23,782	23,625	60	97
Perinton	31,568	31,446	38	84
Pittsford	25,058	24,879	102	77
Riga	3,746	3,697	33	16
Rush	3,287	3,137	142	8

586 EXHIBIT C

1964 (cont'd.)

	Total Pop.	White	Negro	Other
Webster	19,284	19,050	27	7
Wheatland	4,014	3,903	96	15

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EXHIBIT D

Re-Capitulation of the 1971-72 tax roll by Categories

Taxable and partially exempt properties

Category	No of Accts	assessed value
Residences	5143	$47,484,450
Farms	322	3,312,900
Vacant Land	692	1,996,900
Trailer Parks	5	1,852,400
Shopping Centers	8	2,643,500
Commercial Bldgs.	116	3,428,800
Industries	13	911,400
Gas Stations	19	493,200
Apartments	15	4,597,600
Country Club & Recreational properties	2	165,300
Utilities	12	2,498,288
Special Franchise	4	2,268,605
Railroad	1	10,700
Total	6352	$71,664,043

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EXHIBIT C

1970 (cont'd.)

	Total Pop.	White	Negro	Other
Sweden	11,461	11,256	124	81
Webster	24,739	24,549	88	102
Wheatland	4,265	4,136	123	6

591 EXHIBIT D

Re-Capitulation of the 1970-71 tax roll by Categories

Taxable and partially exempt properties

Category	No of Accts	Assessed Value
Residences	4924	$45,568,800
Farms	322	3,235,500
Vacant land	731	2,274,200
Trailer Parks	5	1,811,900
Shopping Centers	6	2,147,200
Commercial Bldgs.	116	3,680,000
Industries	13	917,800
Gas Stations	21	540,100
Apartments	14	4,520,700
Country Club	1	70,400
Utilities	12	2,387,700
Special Franchise	4	1,996,452
Railroad	1	14,672
Total	6170	$69,165,424
Veterans exemptions on above		1,237,900
Aged exemptions on above		117,300
Ministers' exemptions on above		3,000

590 EXHIBIT D

Taxable and partially exempt properties (Cont'd)

		assessed value
given by vet.bur. (1500 ea)	Veteran exemptions on above	$ 1,270,900
	Aged exemptions on above	262,250
	Ministers' exemptions on above	4,500

Fully Exempt properties

Churches	13	$ 1,141,600
Parsonages	12	107,000
School s	12	4,521,200
School land vacant	7	38,100
Church land vacant	4	8,500
Miscellaneous vacant land	16	87,600
Exempt properties	26	97,500
Total	90	$ 6,881,500

593 EXHIBIT D

Re-Capitulation of the 1969-70 tax roll by Categories

Taxable and partially exempt properties

Category	No of Accts	Assessed value
Residences	4801	$29,981,200
Farms	326	2,055,100
Vacant land	752	819,300
Trailer Parks	5	1,128,300
Shopping Centers	5	1,303,500
Commercial Bldgs.	101	2,076,100
Industries	13	653,800
Gas Stations	23	234,900
Apartments	13	2,647,700
Country Club	1	44,100
Utilities	13	1,235,900
Special Franchise	4	1,297,960
Railroad	1	11,696
Total	6058	$43,489,556
Veterans exemptions on above		1,110,900
Aged exemptions on above		72,000
Ministers' exemptions on above		3,000

592 EXHIBIT D

Fully exempt properties

Churches	12	$ 756,000
Parsonages	12	107,000
Schools	12	3,897,000
School land vacant	6	74,600
Church land vacant	5	8,500
Miscellaneous vacant land	15	111,700
Exempt properties (Town, County parks, cemeteries, etc.)	25	943,700
Total	87	$5,898,500

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EXHIBIT D

Re-Capitulation of the 1968-69 tax roll by Categories

Taxable and partially exempt properties

Category	No of Accts	Assessed value
Residences	4669	$28,417,000
Farms	301	1,844,000
Vacant land	771	855,700
Trailer Parks	5	1,172,600
Shopping Centers	5	1,296,300
Commercial Bldgs.	93	1,918,600
Industries	13	634,700
Gas Stations	21	218,900
Apartments	12	2,217,300
Country Club	1	38,100
Utilities	13	798,800
Special Franchise	4	1,280,186
Railroad	1	13,367
Total	5909	$40,708,553
Veterans exemptions on above		970,200
Aged exemptions on above		73,750
Ministers' exemptions on above		3,000

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EXHIBIT D

Fully exempt properties

Churches	12	$ 459,200
Parsonages	11	62,400
Schools	12	2,890,700
School land	6	13,500
Church land	4	3,500
Miscellaneous vacant land	14	32,300
Exempt properties (Town, County parks, cemeteries, etc.)	23	614,700
Total	82	$4,076,300

PROPERTY VALUES

The relationship which assessed value of a municipality bears to its full value is determined annually by the state in order to insure the equitable distribution of items which are levied or disbursed ad valorem among the various municipalities. This ratio of assessed to full value, or "equalization rate," for the Town of Penfield is shown for past years in Table. It is strongly

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EXHIBIT D

Fully exempt properties

Churches	12	$ 459,200
Parsonages	10	52,400
Schools	12	2,810,300
School land	6	13,500
Church land	3	2,700
Miscellaneous (Town, County parks, cemeteries, etc.)	31	625,100
Total	74	$3,963,200

TABLE B (Cont'd)

Source: Special Report of Municipal Affairs by the State Comptroller, 1950-1963: Proceedings of the Monroe County Board of Supervisors, 1949-1965; 1964 & 1965 NYS equalization rates supplied by the Monroe County Department of Assessment and Taxation.

TABLE B

ASSESSED VALUE OF EXEMPT AND TAXABLE PROPERTY REAL & FRANCHISE, STATE AND COUNTY EQUALIZATION RATES, 1950 - 1965
Town of Penfield, New York (Current Dollars)

Tax Year	Taxable Real Property	Taxable Franchise Property	Total Taxable Property	Wholly Exempt Property	Equalization Rate (%) County	State
1966	29,896,195	1,117,677	31,013,872		28	
1965	28,619,595	1,065,933	29,685,528		28	28
1964	26,079,021	974,996	27,054,017		29	28
1963	24,248,420	875,284	25,123,704	2,282,700	30	29
1962	22,418,960	806,475	23,225,435	2,168,800	34	30
1961	20,125,660	686,185	20,811,845	1,963,800	37	34
1960	14,916,860	738,892	15,655,752	1,225,700	39	30
1959	13,033,460	713,817	13,747,277	948,400	38	38
1958	12,032,660	632,872	12,665,532	857,700	38	38
1957	10,780,960	544,292	11,325,252	764,400	35	38
1956	9,333,140	469,326	9,802,466	447,900	49	49
1955	8,249,660	496,215	8,745,875	464,724	49	49
1954	7,822,560	417,600	8,240,160	294,400	90	90
1953	7,117,652	335,120	7,452,772	294,400	80	80
1952	6,368,570	310,760	6,679,330	294,400	80	80
1951	5,755,130	284,360	6,039,490	294,400	80	80
1950	5,196,188	267,400	5,463,588	294,400	80	80

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EXHIBIT E

	1962 - 1963	1963 - 1964	1964 - 1965
Religious Communities	978,820	978,820	950,190
Churches	20,665,240	21,774,200	21,349,680
Parsonages	1,193,230	1,272,610	1,325,730
Clergymen,Residences	151,500	102,000	154,500
Paraplegic Pensioners	26,740	26,740	21,940
Fall Out Shelter		3,090	6,390
Housing Projects	0	0	0
	170,345,524	170,138,331	168,795,635
Pensioners	13,841,330	13,917,555	13,800,715
Grand Total	184,186,854	184,055,886	182,596,350

603
EXHIBIT E

EXEMPT PROPERTY TOTALS

as of July 1st,

	1962 - 1963	1963 - 1964	1964 - 1965
United States of America	3,970,770	3,970,770	3,970,770
State of New York	26,186,551	18,637,082	18,631,500
County of Monroe (Civic Center)	5,071,286	6,039,223	7,110,393
County of Monroe & City of Rochester	1,180,943	1,190,943	1,190,943
City of Rochester	31,736,315	32,188,445	30,862,764
City of Rochester - Land only	994,877	1,151,198	1,394,405
City of Rochester - Land & Buildings	317,890	273,050	363,250
Subway	6,693,764	6,695,274	6,695,274
Public Schools	28,103,502	32,140,652	28,539,892
Educational	22,018,480	23,124,510	25,514,100
Libraries	1,420,644	1,338,044	1,338,144
Character Building Agencies	4,039,330	4,049,950	4,049,950
Clubs and Associations	3,219,690	3,215,010	3,353,580
Charitable	11,063,042	10,663,810	10,669,330
Cemeteries	1,302,910	1,302,910	1,302,910

EXHIBIT E 603

	1965 - 1966	1967 - 1968	1968 - 1969
Religious Communities	951,390	912,830	920,190
Churches	21,605,180	21,867,360	21,788,920
Parsonages	1,355,550	1,390,740	1,383,680
Clergymen, Residences	148,500	139,500	138,000
Paraplegic Pensioners	21,940	35,940	35,940
Fall Out Shelter	6,390	3,640	3,640
Housing Projects	0	6,055,919	7,335,179
	173,684,273	184,849,684	190,150,211
Pensioners	13,963,525	13,797,045	13,481,745
Grand Total	187,647,798	198,646,729	203,631,956
		Aged Exemptions	5,646,590
		Grand Total	209,278,546

EXHIBIT E 602

EXEMPT PROPERTY TOTALS

as of July 1st,

	1965 - 1966	1967 - 1968	1968 - 1969
United States of America	3,970,770	4,518,230	4,518,230
State of New York	18,713,379	14,846,086	14,855,847
County of Monroe (Civic Center)	8,169,287	8,957,677	11,041,425
County of Monroe & City of Rochester	174,660	174,660	174,660
City of Rochester	31,678,950	30,715,351	30,668,533
City of Rochester-Land only	1,046,257	3,228,231	4,752,361
City of Rochester-Land & Buildings	267,470	3,760,930	1,954,516
Subway	6,690,274	6,709,884	6,709,614
Public Schools	28,605,512	28,662,992	30253.572
Educational	26,601,850	28,288,290	28,588,290
Libraries	1,420,644	1,420,644	1,420,644
Character Building Agencies	4,059,140	4,064,540	3,960,420
Clubs and Associations	3,369,980	3,141,480	3,077,030
Charitable	13,500,340	14,628,250	15,246,710
Cemeteries	1,326,810	1,326,810	1,326,810

EXHIBIT E 603

	1969-70	1970-71	1971-72
Churches	21,811,940	21,945,160	21,663,130
Parsonages	1,466,260	1,438,160	1,664,010
Clergymen(Residence)	112,500	106,500	94,500
Paraplegic Pensioners	35,940	35,940	35,940
Pollution Control E.K.C.			1,225,000
Fall Out Shelters	3,640	3,640	3,640
Housing Projects	7,646,774	11,194,226	11,463,716
	$194,983,447	214,600,505	$219,113,269
Pensioners	13,144,980	12,785,570	12,595,170
	$208,128,427	227,386,075	231,708,439
Aged Exemptions	4,493,460	4,903,110	5,214,530
Grand Total	$212,621,887	$232,289,185	$236,922,969

EXHIBIT E 604

EXEMPT PROPERTY TOTALS
as of July 1st,

	1969-70	1970-71	1971-72
United States of America	4,518,230	4,518,230	4,518,230
State of New York	14,034,187	12,848,792	14,956,298
County of Monroe (Civic Center)	12,892,785	23,250,975	23,096,465
County of Monroe & City of Rochester	174,660	1,111,000	1,111,000
City of Rochester	30,597,774	35,470,310	35,163,220
City of Rochester Land Only	3,348,275	3,589,200	2,281,854
City of Rochester Land & Bldgs.	928,136	1,926,836	1,002,700
Urban Renewal Land & Bldgs.			4,645,168
Subways	6,709,614	6,709,614	6,745,006
Public Schools	32,245,572	32,273,092	32,643,562
Urban Renewal Agencies			457,730
Educational	31,969,080	29,809,970	30,476,290
Libraries	1,999,670	1,987,670	2,014,970
Character Building Agencies	3,880,350	3,880,350	3,075,580
Clubs & Associations	3,086,930	3,563,530	2,609,430
Charitable	15,827,370	17,273,570	16,296,510
Cemeteries	1,326,810	1,326,810	1,321,730
Religious Communities	366,950	336,930	547,590

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EXHIBIT G

CITY OF ROCHESTER TAX RATES

Figures in $ per $1000 assessed valuation
Services not included

Year *	City Rate	School Rate	City Totals	Monroe County for City residents	Total Rate
1959	24.50	17.56	42.06	14.12	56.18
60	24.30	21.09	45.39	14.23	59.62
61	24.30	23.22	47.52	14.14	61.66
62	24.30	24.10	48.40	14.55	62.95
63	24.30	24.27	48.57	14.18	62.75
64	24.30	24.27	48.57	15.78	64.35
65	26.68	26.87	53.55	19.24	72.79
66	27.59	27.87	55.46	19.63	75.09
67	29.08	28.87	57.95	18.55	76.50
68	29.08	29.47	58.55	18.12	76.67
69	31.66	32.36	64.02	24.77	88.79
1970	31.66	36.25	67.91	22.56	90.47
71	33.68	42.68	76.36	27.16	103.52
72	33.68	47.27	80.95	28.06	109.01

* City & School rates are for Fiscal year -
July to July ending in Year listed

HEB 4/72

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EXHIBIT F

City Tax Base Is Declining

The Rochester city government will have less property to tax this year, and urban renewal is a major reason, the City Council was told last night.

The city's tax base declined by $6,355, to $760,488,080, largely because the amount of tax exempt property grew, City Manager Kermit E. Hill reported.

Exemptions increased by more than $10.8 million, bringing total tax-exempt property to almost $234 million.

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EXHIBIT H

THE TIMES-UNION Local Front Section B
Rochester, N.Y., Wednesday Evening, April 26, 1972

TV Radio . .
Theaters . . .
Suburb . . . .

The City's Money Woes Grow

Taxes Will Rise, Mayor Confirms

By TOM MINNERY

City and school taxes in Rochester will be increased for the next fiscal year, starting July 1, Mayor Stephen May confirmed last night.

He did not say what the new tax rates would be. Administration officials apparently have not yet settled on a figure. The city tax rate now is $33.48 per $1,000 of assessed property value and the school tax rate is $47.37.

City Manager Kermit Hill said yesterday he has informed the city employe unions that no money will be available in the new budget for salary increases.

City firefighters are scheduled to receive a salary increase July 1. The Locust Club, bargaining agent for policemen, and Local 1635, representing other employes, are currently negotiating new contracts to take effect July 1.

The City Council Republican majority announced earlier this month that the estimated $5 million budget deficit has been reduced to $4 million. Rumored cuts in fire and police ranks would not be necessary if unions worked through the next fiscal year with no increases, the councilmen said in a statement. All three unions rejected the offer.

Hill would not elaborate on the employe salary problem. He said he risked a charge of an unfair labor practice by commenting while negotiations continue.

Portions of the new city budget are nearly complete and will be sent out for printing in a few days. Hill said recently that the tax rates will be the last items figured.

The entire budget proposal must be finished to present to City Council May 15. A budget must be approved by June 15. Public hearings on both the school and city budgets will be held before they are adopted. Dates have not yet been announced.

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EXHIBIT I

...67 PENFIELD PRESS, Penfield, N.Y., June 1, 1972

EIGHT PAGES IN ONE SECTION

Moderate Income Housing Favored

The Penfield Housing Task Force, appointed by the Town Board to study housing needs in the town, has finished one of its tasks, an Opinion Survey of residents' attitudes toward moderate income housing in Penfield, and has published the results.

Pierre Coste of Woodhaven Drive, chairman of the Housing Task Force said results indicate that "a majority of the people of Penfield hold a generally favorable attitude toward moderate income housing in the town."

Coste added: "Actually the Opinion Survey was one part of the three month Task Force effort. We studied housing needs in the County, Penfield's "fair share" of these needs, styles of construction for moderate income housing, Penfield's Zoning Ordinance, and government housing programs. At this Monday's (June 5th) Penfield Town Board meeting the Housing Task Force will present its report which includes some specific recommendations for action by the Town Board. I hope we'll have a good turnout at the meeting so that questions can be raised and answered."

John Peterson, Survey Coordinator, stated: "We received 811 returns from the 2319 questionnaires mailed. We were very pleased with this 35% return." The questionnaire contained 29 statements to which Penfielders were asked if they "Agree Strongly," "Agree," to hold no opinion, "Disagree" or "Disagree Strongly" plus demographic questions. Peterson indicated that responses to eight of the statements were scored to form an Opinion Index. Analysis showed that 19 percent of the respondents had an Opinion Index in the neutral range while 36 per cent were in the negative range and 49 percent were in the positive range. Peterson commented that this difference is statistically significant and not random chance.

Pierre Coste, Housing Task Force Chairman, said: "I believe the survey accurately reflects the opinions of Penfielders in general. We sent questionnaires to every fifth person in the voter registration lists and the 811 returns seem to be representative of the people of Penfield. For example, 66% of the respondents live in a private home; 69% have lived in Penfield over five years and 35% were between 36 and 55 years of age. I think this reflects the heartland of Penfield residents."

Questions of opinion in which responses were 60% above or below the neutral range were summarized as follows:

81% would be more favorable to an apartment house or town house if it was known that residents were paying their "fair share" of town services.

65% feel decent housing is the right of every citizen.

78% feel the Planning and Zoning Boards are obliged to enforce strict zoning laws to protect existing property owners.

73% feel more housing is needed for senior citizens.

72% feel the Town should formulate plans and take actions which will provide moderate income housing which best serves the progress of the Town.

65% do not presently find the idea of living in a condominium appealing. This reduces to 44% if the family is grown up (quest. No. 10).

66% do not approve of federal mortgage assistance for moderate income families.

65% feel a shortage of moderate income housing exists in Monroe County.

65% do not approve of tax abatement of local property taxes to provide moderate income housing in Penfield (in general).

64% approve of tax abatement of local property taxes to provide moderate income housing in Penfield for the elderly (specifically).

64% feel more housing is needed for young families.

63% would not object to living within one mile of moderate income dwellings. This reduces to 42% if the distance is reduced to 1/4 mile (quest. No. 16).

63% feel more housing is needed for moderate income industrial and public service workers.

Among Personal Data Questions:

90% own their present dwelling.

82% reside in a private home.

76% expect to live in Penfield for more than five years.

69% have lived in Penfield for more than five years.

69% feel they understand the main issues.

Analysis is continuing to summarize written-in comments, to establish the significance of the fact sheet, and to further condense the cross tabulated question pairs. These results will be included in a follow up report.

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6B ROCHESTER DEMOCRAT AND CHRONICLE Tuesday, June 6, 197

Moderate Income Housing Said Needed in Penfield

BY BRAD KNICKERBOCKER

Penfield will have to allow construction of at least 2,000 moderate income housing units by 1980 to meet its "fair share" of the county's need for such housing, Town Board members were told last night.

The Penfield Housing Task Force, appointed three months ago by the board to analyze the need for moderate income housing and recommend the types and quantity that should be built, also advised the board to:

• Permit and encourage the construction of a variety of housing styles, types of construction and house lot sizes.

• Adopt changes to the present zoning ordinance necessary to permit the broad variety of approaches to moderate income housing recommended.

• Acknowledge a preference for the construction of moderate income housing by private industry, but consider governmental subsidized proposals as well.

• Encourage such housing in areas of the town in addition to the Penfield Road-Webster-Fairport Road area.

• Review and update the task force's recommendations every two years.

Task force chairman Pierre Coste said the group did not recommend specific changes in the town's zoning ordinance, but cautioned that, "higher densities per acre than those allowed by the present ordinance may be required."

He said the group could not agree on a recommendation concerning the town's planned unit development ordinance. The ordinance originally called for a maximum density of 5.2 units per acre, but was reduced last year to 4.0 units per acre.

The Monroe County Planning Council recommends that such ordinances contain no density requirement and Penfield Supervisor Irene L. Gossin said last April, "The concept of the planned unit development is flexible and if you restrict it, it tends to increase costs and make it inflexible."

Based on current figures for state aid to local schools, the task force found that moderate income housing would cost taxpayers less than high income housing.

"The residents in the moderate income development ... the report concluded, "are paying their 'fair share' better than the residents in the high income development."

Penfield Homes Poll 'Surprise'

Pollsters in Penfield say more residents favor moderate-income housing there than oppose it.

Penfield Housing Task Force members and town officials said they were "surprised" and encouraged by the results of the task-force poll.

Thirty-five per cent of their 3,339 mail questionnaires were answered. Forty-nine per cent of those who answered had "positive" opinions of moderate-income housing, 36 per cent were "negative" and 15 per cent were "neutral."

The questions aimed to find these percentages related to a low-income housing need in Penfield, the town's role in answering Monroe County's need for such housing, whether the person who answered objected to moderate-income housing near his home and whether the town should provide moderate-income housing "which best serves the program of the town."

Thirty-two per cent agreed that "Most people I know feel that when moderate-income groups move into a neighborhood there follows a downgrading of neighborhood appearance and property values."

The percentage jumped to 48 per cent when that question was asked about minority groups instead of moderate-income groups.

Forty-seven per cent said they object to moderate-income housing within one-quarter mile of their home. It dropped to 30 per cent when the housing was to be one-half mile away, and 25 per cent when moved a mile away.

Residents who answered split nearly evenly on whether the state Urban Development Corp.'s plan to build 234 low-and moderate-income subsidized apartments and town houses in Penfield is a "step in the right direction." But they overwhelmingly disapproved of property-tax abatements and federal government mortgage assistance to provide moderate-income housing.

Eighty-six per cent agreed they "would be more favorable toward an apartment-house or town-house project in my neighborhood if I knew the residents would be contributing their 'fair share' to finance such town services as schools, sewers, roads etc."

"I can't say it's an overwhelming mandate the way I read it," said Walter W. Peter, town councilman.

"Thing that clouds it is that people are not in favor of real-estate tax subsidies. They're not in favor if it affects their taxes."

Dr. J. Donald Hare, town councilman and co-chairman of the task force, said, "By and large it's surprising and encouraging that there's a stronger positive feeling than negative.

"In general, (the task force members) feel that the town should join the other communities in Monroe County in helping to provide housing."

Irene L. Gossin, Penfield supervisor, said, "I'm very agreeably surprised that the town seems to be responsive to responsible moderate-income housing."

Pierre Coste, task force chairman, said the group's recommendations to the town board, won't be made public until tomorrow night's town board meeting, but he hinted it may recommend changes to the town's zoning and deeds laws.

Zoning laws, density requirements and constructing costs, he said, now prohibit moderate income housing in Pen[illegible]

JUNE 4, 197[illegible]

16B ROCHESTER DEMOCRAT AND CHRONICLE Sunday, 1972

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EXHIBIT L

THE TIMES-UNION
Rochester, N.Y., Tuesday Evening, June 6, 1972
Page 6B

THE TAXPAYER

Suburb

Housing plan opponent Says, 'I can't afford it!'

Teachers Picket

There are some of the Penfield school teachers who picketed yesterday at school district offices against the proposed budget and their dissatisfaction with what they call lack of progress on contract negotiations. Some teachers demonstrated again today and say they will continue until the June 13 annual meeting. District has been at an impasse in contract talks since May 23.

By LINDA VAN KIRK

Emory W. Miller is one person who was disturbed last night by the report made by the Penfield Housing Task Force.

The task force report recommended, among other things, that the town build an additional moderate-income housing units by 1981.

Miller lives at 27 Hillary Lane on a $40,000 home. He is a consultant for Exploration Services. He has three children, three of whom are in Penfield schools. He says he pays over a month in city and school taxes.

And Miller does not want to see 2,000 more moderate-income housing units in Penfield by 1981.

"Why am I going to pay for the moderate-income housing? Who is going to pay the taxes for sewers, services, roads and, worst of all, schools? The established residents are going to pay," he says.

This is Miller's main concern — that more moderate-income housing will push his tax rate higher.

He takes issue not only with the task force's recommendations.

"I would like more representation on the task force. I would like to see a task force formed to study the whole problem of housing in Penfield. I don't see why Penfield should be picked as a location for moderate-income housing. In five of 10 years any moderate-income housing project will be a high, a high, big 100-acre high, multi-family units are built out of those pages."

Miller says he will be at the next town board meeting to check on whether the task force's recommendations are accepted.

"I don't want Penfield to become a low-cost development that I could move to the next city," he says. "The task force is going to have to modify either its statistics or its values."

Penfield supervisor Irene Gordon says that some modifications may be made in the recommendations but not necessarily at the next town board meeting.

"We'll be studying this thing very, very hard through the whole summer," she says. "I don't know if we'll act on the whole report. We may want to modify certain recommendations and act on them. At any rate, before we take any action, we'll hold public hearings."

Mrs. Gordon, who was the only member of the town board, commended the housing task force March 6 says the report carried several things

It appears that people don't want to spread all their housing in one area of the town in addition to the Penfield Road - Walker - Fairport Road area. (There are currently 670 units which proposed for this area including a project planned by the Urban Development Corporation.)

—That the recommendations of the task force be reviewed and updated in two years.

The task force found that 18 per cent of the housing in Penfield is in the moderate-income range. Of the suburban towns only Brighton, Pittsford, Henrietta and Perinton have lower percentages.

Coste says that single-family homes selling for $25,000 or less would be "very difficult" to build. Consequently, the task force recommends the construction of town houses and multiple units in this price range.

He says that although the group did not ask for any specific changes in the town zoning ordinance, "higher density may be required."

And he says that Penfield does not have an adequate share of the fair share of low and moderate income housing, a philosophy of the state

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EXHIBIT M

Decent Housing Called a Right

By LINDA VAN KIRK

[redacted] a survey by the Housing Task [redacted] housing is [redacted].

But 47 per cent would object to living within a quarter-mile of moderate-income dwellings.

These are some of the results of an opinion survey conducted among 2319 Penfield residents in mid-April. Thirty-five per cent of the citizens returned the 63-question survey.

The 13-member Housing Task Force was formed March 6 to determine moderate-income housing needs in Penfield. The group will present its report tonight and make some recommendations to the town board.

The group's report will combine the results of the opinion survey, a study of housing needs in Monroe County, a determination of Penfield's "fair share" of those needs, a study of styles of moderate-income housing, a review of the town zoning ordinance and a look at government housing projects.

Pierre Coste, chairman of the task force, said the group's recommendations will reflect the results of the opinion survey.

Seventy-two per cent of those responding to the survey said the town should formulate plans and take actions which will provide moderate-income housing that will serves the progress of the town.

Coste said that one of the most surprising results of the survey was the attitude toward the Urban Development Corporation's (UDC) proposed project at Penfield and Nine Mile Point roads. Thirty-nine per cent said it was a step in the right direction; 48 per cent said it was not.

"I think this reflects both an absence of organized opposition to UDC and the fact that the Penfield voter recognizes what he can change and does not try to change what he can't," Coste said.

He said he was also surprised at the attitudes toward tax abatement for moderate-income housing. Sixty-five per cent said they disapproved of tax abatements.

However, when tax abatements are used to provide moderate-income housing for the elderly, 64 per cent said they approved.

Other results of the survey include:

Eighty-one per cent said they would be more favorable to an apartment house or town house if the residents paid their "fair share" of town services.

4/5/72.

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EXHIBIT N

Where You'll Find Crime in the City

By DICK COOPER

TU 3/9/72

More than half of the major crimes in Rochester last year occurred in less than a third of the city's neighborhoods, according to a Times-Union survey based on police statistics.

The high-crime neighborhoods cut a path from southwest to northeast, roughly along Chili Avenue and Main Street.

Major crimes, as defined by police and the FBI, are homicides, rapes, robberies, assaults, burglaries, larcenies and auto thefts.

The police department has 43 reporting areas. The first 14 accounted for 57 per cent of the major crimes. About 29 per cent of the crimes occurred in the next 14 areas, and 14 per cent were reported in the remaining 15 areas.

Police Commissioner John A. Mastrella said the number of crimes is directly related to the density of population in an area. More people mean more crime, he said.

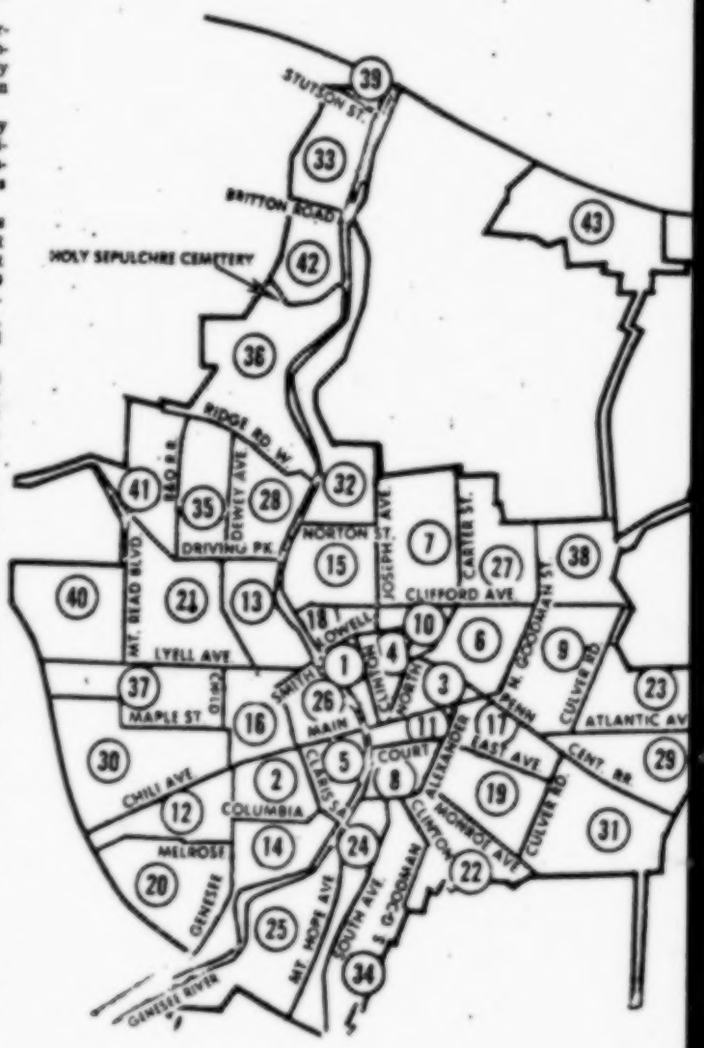
Mastrella said 4,346 arrests were made last year, accounting for 17.1 per cent of the major crimes.

The district with the highest rate of major crime—based on police reporting zones—is bounded by the Genesee River, Lowell Street, North Clinton Avenue and East Main Street. Police reported 1,229 major crimes there.

Mastrella said the high crime rate there is due mainly to the dense population, and a large number of shops and industires which are targets of thieves at night. Larcenies accounted for 1,000 of the total. A large number of these were shopliftings.

The safest area in the city was Durand-Eastman Park with 27 incidents there reported to police. Nineteen of the 27 were larcenies, mostly [illegible] for by bicycle

The Locations



Map shows police crime reporting zones, numbered from the highest crime area (1) to the lowest (43). Chart lists breakdown of major crimes in each area. Numbers on chart correspond with district numbers on the map. Chart listing "unknown" refers to fact that records do not show district in which particular crimes occurred.

614a

EXHIBIT N

The Breakdown

District	Homicide	Rape	Robbery	Assault	Burglary	Larceny	Stolen Vehicles	Total
1	3	2	54	311	277	1090	41	1728
2	4	5	52	424	466	315	61	1267
3	2	2	43	274	220	680	73	1103
4	1	3	30	306	206	422	83	1071
5	2	2	24	261	196	323	48	1056
6	2	4	44	217	216	346	70	898
7	0	1	30	210	137	497	63	913
8	2	2	48	194	148	480	42	907
9	0	1	24	186	133	504	48	896
10	4	1	23	209	202	290	54	885
11	0	1	31	102	94	598	58	850
12	1	1	30	163	122	383	28	846
13	0	1	16	148	108	428	74	775
14	3	3	20	207	244	207	46	730
15	0	4	26	136	135	303	42	646
16	0	1	18	165	143	300	48	675
17	1	0	13	115	109	350	24	612
18	2	1	21	151	129	215	31	550
19	0	3	1	68	76	408	21	537
20	1	0	14	78	143	230	18	484
21	0	0	5	80	83	307	22	497
22	1	1	10	86	78	298	15	489
23	0	0	16	99	47	312	16	490
24	0	1	8	100	85	223	27	444
25	0	0	2	34	34	349	22	441
26	0	0	10	53	92	238	45	438
27	0	1	9	89	91	244	16	419
28	0	2	7	53	80	206	22	390
29	1	0	4	48	82	210	14	345
30	0	1	8	43	71	190	18	341
31	0	1	2	22	55	235	12	327
32	0	1	7	30	30	211	16	295
33	0	1	14	136	28	134	2	315
34	1	0	8	48	70	178	18	323
35	0	0	1	35	36	189	12	273
36	0	0	1	23	37	182	14	258
37	0	0	1	20	50	153	10	234
38	0	1	6	39	25	116	7	194
39	0	0	0	23	23	84	7	137
40	0	0	1	10	18	52	16	97
41	0	0	0	13	6	64	0	83
42	0	0	1	17	22	46	1	87
43	0	2	1	4	1	19	0	27
UNKNOWN	0	1	1	34	1	124	5	166
Total	31	54	725	5,253	4,986	12,743	1,297	25,767

Shooting Case Trial Begins

ALBION — Trial of Sandra Nichols, 20, of Hemlock Ridge Road, Albion, and Robert Roy White, 19, of Root Road, Albion, both charged with first degree assault, opened in Orleans County Court yesterday before Judge J. Kenneth Serva and a jury of six men and six women.

Testimony was heard from witnesses for the plaintiff, Harvey Bonk of Clarendon, who was allegedly injured by a shotgun blast on Nov. 1 on the property of James Reamer of Upper Holley Road, Town of Clarendon. Testifying were Reamer, Laura White, wife of defendant White, and Morris Lanuca of Barker.

Plaintiff's testimony will be resumed at 10 a.m., today.

[illegible] Avenue and Genesee Street, was the worst neighborhood in the city for violent crimes. Four homicides, 8 rapes, 32 robberies were recorded there last year.

By contrast, no homicides, rapes or robberies were reported in areas 39 and 41, the only neighborhoods with no violent crimes reported.

Area 2 also led the city in burglaries with 466, 162 more than second-place area 14.

Mastrella said police have tried to combat the problems in high-crime areas by using more men and more intensive patrolling methods.

"We use monthly computer printouts to show us where the bad spots are and then concentrate on them," he said.

The police Tactical Unit is moved around the city to add more police to high crime areas, he said.

The Model Cities Neighborhood in the northeast, and the southwest sections of the city are patrolled by Coordinated Team Patrols. They operate closely to try to solve more crimes.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	* AFFIDAVIT * Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

ANN McNABB, being duly sworn according to law, deposes and says:

1. I am a private citizen residing at 1966 Penfield Road, Penfield, New York. I am a member of Metro-Act of Rochester, Inc. and a member of the Housing Task Force for Metro-Act of Rochester, Inc., one of the plaintiffs in the above noted lawsuit. I am also a resident of the Town of Penfield, one of the defendants in the above noted lawsuit. As a resident of Penfield, I

am a member and director of Penfield Better Homes, a non-profit corporation organized for the purpose of building low moderate income housing in the Town of Penfield to help alleviate what is a critical need for low and moderate income housing in the Rochester metropolitan area including the Town of Penfield. I make this affidavit in opposition to the motion of the defendants herein to dismiss this lawsuit.

2. I have been involved in Metro-Act since 1966. I have been involved with Penfield Better Homes since its organization in 1968. Penfield Better Homes is a charter member of the Housing Council in the Monroe County Area, Inc.; the Housing Council seeks with the consent of the present plaintiffs to become a plaintiff in this lawsuit. From

my participation in both of these organizations, I have an on going knowledge of the various attempts to bring low moderate income housing to the Town of Penfield. I have personal knowledge of the attempts of Penfield Better Homes to bring low, moderate income housing to the Town of Penfield. I have a knowledge of the proposals which have been submitted to the Town of Penfield from time to time to provide low and moderate income housing. I have attended and/or participated in many of the public meetings held in the Town of Penfield in connection with the providing of low and moderate income housing since 1968.

3. From my experience in efforts to bring low and moderate income housing construction to the Town of Penfield, I

can personally attest to the findings made by the Metropolitan Housing Committee in its study "Housing in Monroe County, New York" and the study entitled "Town Zoning and the Shortage of Moderate and Low Income Housing, Monroe County, New York" prepared by Rochester Bureau of Municipal Research, Inc., now the Rochester Center for Governmental Research, as being conclusions which are directly applicable to the Town of Penfield with respect to its policies and practices on zoning and with respect to its zoning ordinance. The Rochester Bureau of Municipal Research, Inc. (now Rochester Center for Governmental Research) in its study of April 1967 entitled "Town Zoning and the Shortage of Moderate and Low Income Housing, Monroe County, New York" found that town zoning

practices which mandate large lot sizes, large structure setbacks and low density occupation of the land, are a major contributing factor to the maintenance of the suburban towns of Rochester as enclaves for middle and high income residences only. (See Town Zoning and the Housing Shortage, Monroe County, pages 19 and 20, Exhibit A attached hereto and made a part hereof.) Further, the Metropolitan Housing Committee in its report "Housing in Monroe County, New York", Summary Report, April 1970, found that there was a critical need for the construction of low and moderate income housing in the suburban towns; that the necessary land available for the construction of low and moderate income housing was to be found in the

suburban towns.

> The complete rejection by suburban communities of all low and moderate income housing is testimony to the severity of the problem of prejudice involved. While many of the community groups and agencies - as well as individual citizens - have been working for open housing, their various efforts have proved insufficient. Racial prejudice and discrimination must be considered one of the most serious obstacles blocking the construction of low/moderate income housing where it is needed.
>
> (Summary Report, Housing in Monroe County, New York, page 10, Exhibit F of Robert J. Warth affidavit submitted herewith.)

4. As a private citizen I have been continually involved in advocating the construction of low and moderate income housing in the Town of Penfield since 1967 and have been a participant in the submission of proposals for the construction of low and moderate income housing in the Town of Penfield since 1969. The Penfield town board and planning

board have, through a combination of actions as more particularly set forth below, either 1) delayed action on proposals for inordinante periods of time, 2) denied approval to a proposal for the construction of low and moderate income housing for totally arbitrary reasons, 3) failed to provide necessary supporting services for low and moderate income housing, 4) amended the zoning ordinance to make nearly impossible the approval of low and moderate income housing proposals.

5. In May of 1970, the Town of Penfield was the first suburban Rochester community to adopt a planned unit development section of its zoning ordinance.

> The Planned Unit Development (PUD) concept involves planning on the level of a neighborhood or community rather than on the level of an individual lot or single use. Generally,

the PUD concept applies most effectively to project areas exceeding 100 acres in size. PUD objectives are comprehensive and involve viewing the components of a development as they relate to the needs of an entire town and, even, to a metropolitan area. A PUD achieves flexibility and efficiency in land use. A PUD conserves our limited land resources by stopping current patterns of urban sprawl development. A PUD provides a more convenient, conflict-free environment through the integration of commercial, recreational, educational, vocational and open space land uses with residential uses at neighborhood levels. A PUD includes a variety of residential types suitable for all age groups and income levels. In short, a PUD provides a living environment superior to that generally achievable under standard zoning and subdivision regulations.

Attached hereto and made a part hereof as Exhibit B is a copy of A Model Planned Unit Development Article for a Town Zoning Ordinance, Monroe County Planning Council and the Rochester Center for Governmental Research and Community Research, Inc., March 1970 (Third Draft).

Because high cost of land and construction in suburban towns makes it impossible or

extremely difficult for the developer to build low and moderate income housing, the clustering and use of higher density in the planned unit development allows the builder to reduce his costs and then rent or sell his property at relatively lower prices.

6. A review of the courses of the following planned unit development proposal is an index to the Town of Penfield's action to discourage and prevent low and moderate income housing in the Town of Penfield. A PUD plan was submitted by Mr. Joseph Audino for the Beacon Hill site in Penfield. In June 1970, this proposal was for the construction of 490 single and multi-family units including a commercial area. Attached hereto and made a part hereof as Exhibit C are the Planning Board Minutes,

June 9, 1970. The proposal was tabled by the planning board of Penfield. I understand that people who lived in neighboring areas objected to the apartments and the commercial area which was a part of the plan.

7. In August of 1970, Mr. Audino submitted a second, different plan for a PUD; the planning board, in September of 1970, denied this proposal (a more conventional proposal omiting the commercial area and not as diversified as the former in mixture of housing types) as a proposal not consistent with the best overall use of the area. This proposal consisted of the construction of 316 units. (See Planning Board Minutes attached hereto and made a part hereof as Exhibit D.)

8. An additional proposal for a planned unit development was submitted to the planning board by Mr. Audino for the Beacon Hill area in May of 1971. This proposal provided for the construction of 474 units. (See Planning Board Minutes attached hereto and made a part hereof as Exhibit E.) The Monroe County Planning Council approved the plan. (See Exhibit F attached hereto and made a part hereof.) The plan also was approved by the Town of Penfield's planning board with the proviso of reducing the density from that proposed. (See Exhibit G attached hereto and made a part hereof.) The number of units was reduced to 387 at a later stage. A description of the plan is attached hereto and made a part hereof as Exhibit H. At the time the Audino application to re-zone

the area from residential AA to PUD District (for the purpose of implementing the Beacon Hill 's PUD) was presented to the Penfield town board, the Penfield town, apparently responding to citizen pressure, held a hearing on amending the PUD ordinance. The Planned Unit Development ordinance was amended reducing the permitted density from 5.2 to 4 dwelling units per acre and further providing for every multiple dwelling unit or duplex unit there must be a single family dwelling. (See Exhibit I attached hereto and made a part hereof.)

9. The Beacon Hills PUD was passed by the Penfield town board with the condition that it conform to the density limitations in the PUD amendment. (See Exhibit J attached hereto and made a

part hereof.) In January of 1972, the Penfield town board repealed the re-zoning from AA to PUD of the Beacon Hills PUD and referred the matter to the Monroe County Planning Council for its recommendations. (See Exhibit K attached hereto and made part hereof.) The Monroe County Planning Council recommended disapproval for the re-zoning change. (See Exhibit L attached hereto and made a part hereof.)

10. According to Mr. Audino, the Beacon Hills PUD proposal is under tabled matters under consideration by the Planning Board pending results of court action taken by the neighbors around the Beacon Hill site and attempts to arrive at a compromise on a further lowering of the number of units. According to a recent news article, Exhibit M attached hereto and made a part hereof, a compromise on the number of units has now

been made.

11. Prior to the hearing on the amendment to the PUD ordinance, noted above, Penfield supervisor, Howard J. Frank, commented (see news articles attached as Exhibit I above) that because the planned unit development proposals submitted to the Town of Penfield had thus far included a high percentage of apartments, Penfield would need to amend the ordinance. Supervisor Frank was quoted in the newspaper as saying,"You've got problems when you have apartments and you're putting them in residential AA areas next to $40,000.00 homes." The amendment to the planned unit development ordinance in the Town of Penfield was passed over the strong opposition of builders interested in

constructing low and moderate income housing as well as the Monroe County Housing Council who described the proposed amendment as a "foolhardy attempt to impose even more stringent regulations." (See full statement of the Monroe County Housing Council and correspondence attached hereto and made a part hereof as Exhibit N.)

12.An application by Penfield Better Homes for the re-zoning of land in the Town of Penfield from A to Townhouse Dwelling District for the construction of low moderate income housing met with a pattern of frustration delay and ultimate denial. In September 1969, Penfield Better Homes Corp., of which I am a member and director, made a proposal to the Penfield Planning Board at a public

hearing for the construction of a project "Highland Circle", a complex of cooperative housing units which would be sold to persons earning approximately $5,000.00 to $8,000.00 a year under §236 of the Federal Housing Act of 1968. (A copy of the proposal is attached hereto and made a part hereof as Exhibit O.) This proposal was submitted to the Planning Board after comprehensive studies had been made by Penfield Better Homes Corp. on all aspects of the effect of this proposal on the surrounding community. (See attached Exhibits P through Q attached hereto and made a part hereof.) The background work on the proposal included the securing of a legal opinion by Penfield Better Homes from Robert M. Anderson, Esq., zoning expert at Syracuse University Law School, in anticipation of

the concern the Town of Penfield might have for rezoning and creating a "spot zoning" problem. (See Exhibit R attached hereto and made a part hereof.) A second public hearing was held in November 1969.

13. By resolution of the Penfield Planning Board, a copy attached hereto and made a part hereof as Exhibit S, the proposal of Penfield Better Homes Corp. was denied on the grounds that the 1) townhouse construction proposed would constitute an inappropriate use of the land and would not be consonant with existing character of the neighborhood, 2) the proposed use would create traffic problems within the area and 3) the proposed use would create problems of erosion during and after the construction. Data previously supplied to the Planning

Board directly contradicted the specific reasons for denial of the application - a survey by the County of Monroe, Director of Public Works, had revealed that increased traffic would not create any problem with respect to the existing traffic facilities in the area. Further, a thorough review of the proposed apartment site demonstrated that, following certain precautions, construction could well proceed in the area without any detrimental effect. The town board further denied an application by Penfield Better Homes for a public hearing to consider further the question of re-zoning for the Highland Circle Project. (See Exhibit T attached hereto and made a part hereof.)

14. To my knowledge, Penfield Better Homes is the only corporation to present a plan to the town involving a subsidy program in order to provide low moderate income housing for individual persons and particularly for families, with the exception of the recent, April 1972 UDC proposal.

15. In September of 1971, O'Brien Homes, Inc. submitted an application to the Penfield Planning Board for the re-zoning of 17.1 acres in Penfield from AA to apartment zoning of approximately 12 units per acre. On the basis of a County Planning Council recommendation, O'Brien Homes, Inc. had previously committed itself to the Town of Penfield to set aside a portion of land in a townhouse development O'Brien Homes had underway to

be used for low to moderate income housing.

16. O'Brien Homes outlined a proposal for a condominium development of apartment homes, including a Home Owners Association to guarantee exterior maintenance, consisting of 51 four-family buildings with garage for each family as an integral part of the building (two hundred and four units). A copy of this proposal is attached hereto and made a part hereof as Exhibit U.

17. The project was described as one to offer single people and small families of low income with accumulated funds and those of moderate income with limited funds for down payment the opportunity to enjoy the advantage of home ownership.

18. The O'Brien Homes proposal was denied by the Planning Board following the September hearing. (See Exhibit V attached hereto and made a part hereof.) There was further discussion by the Planning Board on March 27, 1972. (See Exhibit W attached hereto and made a part

hereof.) A modification of the original proposal was heard by the Planning Board on April 24, 1972. (See Exhibit X attached hereto and made a part hereof.) To date it remains under tabled items and has been referred to the Monroe County Planning Council for its recommendation.

19. At this time there are only two PUDs which have received the first stage of approval in Penfield. (The Audino PUD has been repealed. See above.) The first is known as the Standco PUD - approved in 1970 for re-zoning and before public concern focused on the PUD issue in Penfield. The second is known as the Rock Lake PUD (which was 4.67 units per acre) and was approved for re-zoning in September 1971 under the condition that it conform to the density limitation in the PUD ordinance, as amended. (See

Exhibit Y attached hereto and made a part hereof.) The PUD ordinance requires three stages of approval 1) re-zoning 2) preliminary site plan 3) final site plan. The Standco PUD is awaiting further public hearing. (See Exhibit Z attached hereto and made a part hereof.) Persons connected with the Rock Lake PUD say that at the present density they cannot build the type of community they had planned, so they are virtually giving up the idea for the moment.

20. Most recently has come the suggestion by the Town of Penfield board officials that sewer services are inadequate in the Town of Penfield for the increased density that would be involved in the construction of low and moderate income housing and therefore such a proposal must be denied. In March of 1972, the Penfield

planning board announced that it was the town's new policy not to allow any more building in Sewer District #3 in Penfield because the sewer services in that district were now operating at 1 1/2 times its capacity.

21. According to minutes of the planning board attached hereto and made a part hereof as Exhibit AA, an application of Philip Prinzi for Zuric Development Corporation, Lyell Avenue, Rochester, New York to re-zone from residential AA to residential A, sections 3 and 4 of Independence Ridge subdivision in order to build smaller homes on lots of the same size as originally planned was denied by the planning board. A representative of Domus Homes which planned to construct the homes, argued to the planning board that there was a great need and a

market for homes in the $25,000.00 to $30,000.00 range.

Additionally, from minutes of planning board in March of 1972, the Penfield planning board denied the application of Angelo Castronova, 1766 Empire Blvd., Rochester, New York for re-zoning of two acres of land on the west side of Creek Street from commercial to apartment house and multiple dwelling for the purpose of constructing 24 apartment units.

The Beacon Hills Planned Unit Development proposed by developer Audino, referred to above in paragraphs 6 through 10 is located in Penfield Sewer District #3 on which the planning board of Penfield now imposes a complete construction moratorium. Mr. Audino to cope with this situation,

is planning to pump sewer into another Penfield sewer district. The Housing Task Force of the Town of Penfield by its Report of Penfield Housing Task Force on Moderate Income Housing, June 5, 1972, has acknowledged the insufficiency of present sewer facilities in view of its proposals for moderate income housing construction in Penfield.

> In contrast the sanitary sewer situation is too complicated to be dealt with effectively within the scope of the activities of this Task Force. At present there is insufficient capacity to handle 2000 additional dwelling units in Penfield, regardless of their location or cost. In fact, certain approved developments cannot start construction until portions of the sanitary sewer problem are resolved. The Town Board is aware of these problems and is evaluating solutions. This Task Force assumes that satisfactory solutions will be identified and that the appropriate action will be taken to permit the normal growth of Penfield as well as the construction of the recommended moderate income housing.

22. As is illustrated above, the town board of Penfield, and the planning board of Penfield have either individually and/or in concert, directly or indirectly in the past, and continuing to date, frustrated attempts at the building of and prevented opportunities for low and moderate income housing units in the Town of Penfield, amended the PUD ordinance so as to make more difficult the availability of low and moderate income housing through planned unit development in Penfield and have failed or refused to re-zone as might be required for the construction of low and moderate income housing in the Town of Penfield. Such policies and practices have the effect of specifically excluding low and moderate income persons, blacks, Spanish-

AFFIDAVIT, ANN McNABB

Americans, and other minorities from living in the Town of Penfield.

/s/ Ann McNabb
ANN McNABB

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TOWN ZONING AND THE HOUSING SHORTAGE

ROCHESTER BUREAU OF
MUNICIPAL RESEARCH,
INC.
A CITIZEN AGENCY

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TOWN ZONING AND THE SHORTAGE OF MODERATE AND LOW INCOME HOUSING
Monroe County, New York

A Study Memorandum Prepared for the
CIVIC DEVELOPMENT COUNCIL
of the Rochester Chamber of Commerce

by

Friedrich J. Grasberger, Principal Research Analyst

ROCHESTER BUREAU OF MUNICIPAL RESEARCH, INC.
37 South Washington Street
Rochester, New York
14608

April, 1967

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Introduction

Within the last few years the Rochester area has experienced a phase of unprecedented economic growth. Total employment figures, which increased at the average annual rate of 3,000 during the 'fifties, increased almost 12,000 annually between 1960 and 1966. In fact, during 1966 the Rochester area experienced its largest one-year increase in civilian employment on record--almost 20,000 new employees were added.[1] The rapid expansion of employment was accompanied by equally impressive increases in industrial production and per capita

[1] New York State Department of Labor: Manpower Trends, 1950-1966.

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income. The dollar value added by manufacture per employee in Monroe County rose from about $10,000 in 1958 to almost $15,000 in 1963 when all other metropolitan areas of New York State including New York City were still hovering around the $10,000 level.[1] The 1960-1964 growth in per capita income in Monroe County was almost twice that of its neighboring metropolitan counties of Erie and Onondaga.[2]

In the last year or two, however, this exciting record of economic expansion has been marred by the realization that commerce and industry are

[1] U.S. Census of Manufactures: New York, preliminary report.

[2] New York State Department of Commerce: Personal Income in Counties of New York State, 1960-64.

running into severe difficulties to recruit the manpower necessary for the continuation of their growth. Recent surveys of Rochester industry point to a current manpower shortage of more than 10,000. Considering the extremely low current rate of unemployment (slightly more than one percent) these manpower needs must be met primarily from inmigration. However, repeated efforts by local industry to attract new manpower into this community have met with very little success because of a serious lack of low and moderate income housing in Monroe County.

This housing shortage is rapidly assuming proportions that pose a serious threat to the future growth and the economic as well as social health of the Rochester community. Low and moderate

income earners are crowding the older sections of the city, the aged are unable to exchange their dwellings for smaller homes or reasonable rental units requiring less maintenance efforts, and the community's youth entering into the manpower market are finding it increasingly difficult to remain in the Rochester area because of the lack of suitable housing.

If this community is to continue to grow and prosper, immediate attention must be focused on the problem and coordinated efforts directed towards its solution must be undertaken without delay.

Interestingly enough, the severe housing shortage has arisen at a time when the construction of new homes and apartments has reached record levels in Monroe

County. During the six years from 1960 through 1965 in the county's towns alone the construction of 26,852 new dwelling units was authorized by building permits, 7,221 of which were apartments.[1] Unfortunately, however, almost all of this construction occurred in price and rental categories which are beyond the means of the moderate and low income earner.

Traditionally the blame for the high cost of housing has been placed on rapidly rising construction costs and on the booming cost of land. Increasing attention in recent months, however, has been directed towards a third cause--

[1]Monroe County Planning Council: Sixth Annual Building Permit and Population Survey, Monroe County, New York, June, 1966.

zoning. It is contended by builders that the towns' zoning ordinances prevent the construction of needed moderate and low income housing by imposing excessive requirements for lots and buildings.

This study memorandum will examine the extent of the housing shortage, analyze its causes, and develop recommendations to alleviate the problem.

The Scope of the Problem

In order to determine the extent of the low and moderate income housing shortage it is necessary to (1) define the term low and moderate income, (2) measure the demand for such housing, and (3) measure its supply.

Definition of Low and Moderate Income Housing

The average weekly earnings of

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Rochester production workers, including pay for overtime, amounted to $120.96 in 1965[1] or, converted to an annual figure, to $6,290 per year. Since a significant proportion of production workers are single individuals who normally are considered more a part of the demand for rental dwellings, a better income criterion for the potential buyers of low and moderate income houses is the average or median income for families. Since most of the families constituting the demand for moderate and low income housing are in relatively low age brackets, the estimated 1965 median income given

[1]New York State Department of Labor: Employment Review, New York Manpower Profile, 1965 in Perspective, May, 1966.

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for families with family heads under thirty-five years of age and children under six should serve as an appropriate definition of "moderate income" in this context. The median income for such families is $7,560 per year in Monroe County.[1]

Experience indicates that the average family can afford to purchase a home costing the equivalent of twice its annual income.[2] Another commonly used yardstick suggests that an individual's or a family's monthly expenditures on housing should not exceed one week's income. Thus, for the purposes of this

[1]Estimate based on 1960 U.S. Census figure and per capita income growth as reported by the New York State Department of Commerce.

[2]This ratio would rise with an increasing amount of cash down payment.

study, moderate and low income housing will be defined as purchasable homes costing in the neighborhood of $15,000 or less and as rental units with monthly gross rents of $140 or less.

The Demand for Low and Moderate Income Housing

The aggregate demand for additional housing of all kinds in the Rochester area consists of (1) internal population growth, i.e. young, single adults and newly married couples leaving their parental homes, and (2) single and married in-migrants moving in from outside the county.

It is difficult to estimate from the available data even the approximate numbers of potential home renters and buyers entering the market each year. It is possible, however, to indicate the

relative changes on the housing demand side which have occurred since 1960. As a result of the rapid increases in the Monroe County birth rate beginning in 1942, the 1960's are, and will be experiencing the entrance of unprecedented numbers of young adults into the home rental and buying markets. As shown in Table 1 on the following page, the younger age groups preceding age group 25-29 exceed the latter by 12.4%, 41.7%, and 63.4% respectively.[1]

---

[1]Death rates for the above age groups are uniformly low and will not affect the validity of the comparison.

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TABLE 1

SELECTED AGE GROUPS, MONROE COUNTY, 1960 and 1964

Age Group	Number of Persons 1960	1964	1964 Age Group 25-29 = 100%
25-29	34,665	35,045	100.0%
20-24	30,847	39,417	112.4%
15-19	37,549	49,670	141.7%
10-14	50,888	57,278	163.4%

Sources: 1960 U.S. Census of Population
1964 Special Census, Monroe County, New York

On the basis of these data it can be safely concluded that the annual number of new family formations which ran at a level of approximately 3,500[1] in 1960 was at least ten percent higher in the early 'sixties and will in all liklihood reach a level of almost 5,000 a year in the late 'sixties. Corresponding relative increases have taken and will take place in the number of young single adults looking for their own

[1]New York State Department of Health, Vital Statistics Review, 1960.

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homes. Due to the very young median ages of the brides (21 years)[1] and grooms (23 years)[1], it can be assumed that the vast majority of them will be looking for either low or moderate income housing. On the other hand, the young single adults will probably be in the market for mostly low income housing since, unlike some young couples, they are dependent on only one person's income.

The net in-migration component of housing demand has also been increasing steadily. According to data from the Monroe County Planning Council annual net in-migration into Monroe County has risen from about 3,000 in the 'fifties

[1]New York State Department of Health, Vital Statistics Review, 1960.

to about 5,000 in the middle 'sixties. Previous studies of in-migration patterns have revealed that the majority of the incoming adults are in the 20-35 year age group. For this reason they can be expected to add considerably to the demand for low and moderate income housing.

Supply of Low and Moderate Income Housing

Net additions to the supply of low and moderate income housing have failed completely to keep pace with the growth of the demand for such dwellings. A 1965 survey of rental vacancies conducted by the Rochester Bureau of Municipal Research indicated that the number of low and moderate rental vacancies had dropped drastically below the 1960 level. No data are available reflecting changes in the supply of rental housing in the City of

Rochester. In the towns of Monroe County, 7,221 multiple housing units were authorized for construction between 1960 and 1965[1] virtually all of which rent at levels considerably above $140 per month.

A more precise but equally discouraging picture is offered by the following data depicting the annual supplies of low and moderate income homes which were purchased between 1960 and 1965.

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[1]Monroe County Planning Council: op.cit.

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TABLE 2

NEW HOUSES COMPLETED AND SOLD IN MONROE COUNTY, 1960-1965

	Homes Selling For			
	$15,000 or less		$15,001-20,000	
	#	% of Total	#	% of Total
1960	61	4.3	697	49.3
1961	20	1.2	670	39.0
1962	40	2.0	837	42.5
1963	4	.4	842	34.6
1964	13	.5	793	27.6
1965	3	.1	604	20.0

Source: First Federal Savings and Loan Association: Annual Surveys of New Construction in the Rochester Metropolitan Area, 1960-1965.

As shown in Table 2, new houses costing $15,000 or less have virtually disappeared from the market. New homes in the $15,000-20,000 class which in 1960 accounted for almost fifty percent of all new homes sold have dropped drastically to represent a mere twenty percent of the market in 1965.

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Table 3 shows that the sales of existing homes have also failed to rise sufficiently to keep pace with the growth in demand. Total 1965 sales of all existing homes under $20,000 were only thirty -seven units above the 1960 total. A closer inspection of the "$15,000 or less" data, furthermore, reveals that the existing homes in this category sold in the towns of Monroe County actually decreased from 758 units in 1961 to 407 units in 1965. The compensating growth in this price class, therefore, occurred within the City of Rochester. But unfortunately many of these units are located in relatively undesirable neighborhoods and are consequently unacceptable to a large portion of the demand sector.

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TABLE 3

EXISTING HOMES SOLD IN MONROE COUNTY, 1960-1965

	Existing Homes Selling for $15,000 or less		Existing Homes Selling for $15,001-20,000	
	#	% of Total	#	% of total
1960	1,756	53.4	935	28.4
1961	1,761	52.8	979	29.4
1962	1,756	48.9	1,132	31.5
1963	1,717	47.3	1,106	30.5
1964	1,629	45.4	1,080	30.0
1965	1,634	43.3	1,094	29.0

Source: See Table 2

Reasons for the High Cost of Housing

The primary determinants of the cost of a new home are the size and quality of the structure and the size and location of the lot. Both construction costs and land cost have risen continually for several decades now particularly in urban areas, and indications are that this trend will continue to extend into the future. But what about personal income?

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Has personal income not also grown to maintain an equilibrium between the cost of housing and the ability to purchase a new home?

TABLE 4

GROWTH OF BUILDING COSTS AND PER CAPITA INCOME

	Average Building Cost Index(United States)	Per Capita Income Index (Monroe County)
1956	100.0	100.0
1957	103.6	102.5
1958	106.9	100.5
1959	111.6	104.8
1960	114.0	107.8
1961	115.8	108.0
1962	118.2	112.9
1963	121.0	116.7
1964	124.7	125.6
1965	127.7	135.6

Sources: 1. Engineering News Record, 1957-1966.
2. New York State Department of Commerce, Personal Income in Counties of New York State, 1950-1965.

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Table 4 above reveals that per capita personal income in Monroe County has kept pace with the increases in average building costs over the past ten years. Unless evidence can be introduced showing that average building costs in Monroe County have risen significantly faster than the national average the blame for the shortage of moderate and low income housing cannot be placed on the rising costs of construction.

Unfortunately no precise statistics[1] are available which might reflect the increases in the cost of land in Monroe County. It is safe to assert, however, that the cost of land in and immediately

[1]A National Association of Home Builders' survey published in the January issue of the Rochester Home Builders Monthly showed a 1960-1964 price increase per lot of 31.3% in Rochester. However, the survey neither defined"Rochester" nor the type and location of lots surveyed.

EXHIBIT A

adjacent to urbanized areas has risen much faster than both construction costs and personal income. Ten years ago the per acre cost of residentially zoned land was selling in the hundreds of dollars, today builders talk in terms of thousands of dollars per acre of raw land.

> "While every segment of our economy has experienced rising prices, the pronounced increase in vacant land costs throughout the state has far exceeded the 'norm' established in these other segments. In the last decade average land prices have more than tripled and some urban and subruban land has skyrocketed as much as 2,000 percent. . ."[1]

In addition to the growth of the costs of raw land builders are being faced by more and more demands for investment

[1]New York State Home Builders' Association: 1966-67 Housing Report, p. 14.

in community facilities such as sanitary and storm sewers, sewage treatment plants, water lines, streets, curbs, and park and recreation areas. The expenses for these investments are added to the cost of land to the home buyer who then must finance them with prevailing mortgage interest rates.

> "These costs, plus the land cost, now represent approximately twenty-five percent of the purchase price of the house. In the 1940's the average figure was 8-9 percent of the cost of the house. . . "[1]

Thus, rising land costs have been a significant factor contributing to the shortage of low and moderate income housing. Of course, land costs could be

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[1]Ibid.

reduced by building at farther distances from urban centers, but increased commuting expenses and the scarcity or lack of municipal services would tend to offset the increased price attractiveness of such homes.

In view of these rising per unit costs and the increased demand, it would seem logical that builders would attempt to satisfy this demand for low and moderate income housing by building more instead of less or the smaller homes on smaller lots, thereby counteracting the cost trends discussed above. Probably the major deterrent to this solution is ZONING.

Residential Zoning in the Towns of Monroe County

The general city, village and town laws of the state provide that any city,

village or town may adopt zoning regulations. Under the law municipalities are empowered to regulate and restrict the size and use of buildings, structures, and land.[1] Within the context of this study we may ignore city and village zoning since very little vacant land is left in these urban centers which can be used for residential development. The primary concern is with town zoning, the zoning for the vast areas of vacant land surrounding the urban cores and urbanized rings. To provide a basis for evaluation of zoning practices, the following sections contain: (1) a review of current expert opinion on optimum densities for residential development in suburban

[1]New York State Department of Commerce: Local Planning and Zoning, 1966 Edition.

areas; (2) a description of prevailing zoning practices in the towns of Monroe County; and (3) an analysis of the reasons for these practices.

Optimum Average Residential Densities

Planning experts are in close agreement on the optimum ranges of housing and population densities for various types of communities and different types of structures. The following densities are considered optimal in terms of neighborhood planning, cost of construction, market absorption and long-term values:

1. According to the American Public Health Association[1] a desirable average residential density consists of 5 dwelling units per acre with a

[1]American Public Health Association: Planning the Neighborhood, Standards for Healthful Housing, 1943.

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maximum of 7 per acre. The recommended minimum lot size is 6,000 square feet, the minimum structural square footage per family is 870.

2. Professor Kevin Lynch of M.I.T. cites a standard density of five single dwellings per acre and a recommended size of the structure equal to 20 percent of the lot.[1]

3. The optimum residential density envisioned for the planned community of Reston, Virginia is fourteen persons per acre which roughly corresponds to four families per acre.[2]

4. The Ubran Land Institute in "New Approaches to Residential Land Development" describes many new community developments with density objectives ranging from four dwellings per acre in suburban areas to seven families in areas closer to the urban center.[3]

The most concise treatment of optimum

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[1]Kevin Lynch: Site Planning, the M.I.T. Press, 1962, p. 145.

[2]R.E. Simon: Planning a New Town-Reston, Virginia, American Society of Planning Officers, 1964.

[3]Urban Land Institute: New Approaches to Residential Land Development, Technical Bulletin 40, January, 1961.

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residential density has recently been prepared by the Federal Housing Administration.[1] Its optimum range for one story detached dwellings consists of a minimum of 4,356 square feet and a maximum of 7,840 square feet of floor area per gross acre. For one story structures averaging 1,000 square feet the resulting optimum density range would thus be 4.4 -7.8 dwellings per acre, for one story structures averaging 1,500 square feet the range would be 2.9 - 5.2. Its optimum range for two story detached dwellings is 4,356 - 8,712 square feet of floor area per gross acre which is equivalent to a density range of 3.6 - 7.3 for dwellings

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[1]F.H.A.: Land Use Intensity, Land Planning Bulletin No. 7, 1965.

of 1,200 square feet or 2.7 - 5.4 for dwellings averaging 1,600 square feet of floor area. Converted to net acreage requirements the above density ranges would be equivalent to lot sizes ranging from 6,500 square feet to 13,000 square feet.

Residential Zoning Practices in the Towns of Monroe County

The zoning ordinances in the towns of Monroe County have traditionally restricted residential land use to one family houses. Some of the more urbanized towns have recently provided some land for multiple dwelling but virtually all of the apartments constructed are for high income families only. Most of the land zoned for residential purposes still consists of large areas in separate zoning categories, each catetory restricting

land use by clearly defined minimum sizes of lots and structures. As a result the residential patterns show clearly delineated economic stratifications.

Areas in which minimum standards governing the size of lots and structures are high are primarily occupied by high income families. Areas with lower minimum standards have attracted proportionately less affluent segments of the population. This type of zoning and the accompanying economic stratification of the residents has led to a high degree of uniformity of developments within the same zoning areas and of homes within the same developments. The acceptance of such uniformity in turn has acted as a strong impediment to zoning for smaller lots and homes because

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while uniformity appears proper in the case of middle and high income houses it is not acceptable for the moderate and low income homes. In spite of ample evidence to the contrary, particularly in the towns of Brighton and Irondequoit, small lots and homes are popularly viewed as unsightly and undesirable, and any action to relax zoning to permit such lots and homes in large areas would be most likely considered at attempt to create large scale slums in the suburbs.

As shown in Table 5 below, the average minimum lot sizes in the various zoning categories in the towns of Monroe County, with the exception of Irondequoit, are far above the optimum standards discussed in the preceding section.

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TABLE 5

MINIMUM PERMISSIBLE SIZES FOR RESIDENTIAL LOTS AND TWO STORY STRUCTURES
TOWNS OF MONROE COUNTY, 1966

	Minimum lot area (Square feet)	Minimum ground floor area for 2-story residences (Square feet)
Greece	7,200-20,000	600-1,200
Gates	8,000-15,000	625- 875
Irondequoit	9,600- 9,600	500- 660
Brighton	11,250-23,125	500- 900
Henrietta	12,000-20,000	480-1,000
Chili	12,000-20,000	650- 700
Parma	14,450-20,000	600- 800
Wheatland	15,000-30,000	500- 650
Penfield	15,000-20,000	650- 750
Clarkson	15,000-20,000	640- 840
Hamlin	15,000-15,000	768- 768
Perinton	15,750-20,000	650- 925
Pittsford	16,000-25,000	750-1,000
Ogden	17,500-20,000	660- 768
Webster	18,000-28,125	660- 864
Sweden	20,000-20,000	576- 576
Riga	20,000-20,000	884- 884
Rush	30,000-30,000	575- 750
Mendon	30,000-30,000	800- 800

Source: Zoning Ordinances, Towns of Monroe County, 1966.

Table 5 also indicates wide disparities in the minimum requirements regarding sizes of residential lots and structures in the nineteen towns of Monroe County. The minimum lot sizes in the towns of Rush and Mendon are more than four times as large as the minimum lot size in the town of Greece. The minimum ground floor area for two story structures in the town of Riga is almost twice as large as that in the town of Henrietta.

Only six of the nineteen towns provide for lot sizes within the optimum range and of these six only Irondequoit keeps the minima for all single residential zoning categories within this range.

The minimum ground floor areas for two story structures is in all cases higher than the minimum of 435 square feet

recommended by the American Public Health Association (see page 9), although the four towns with minima of 500 square feet or less are very close to this standard. The remaining fifteen towns, however, exceed the standard by 32 to 103 percent.

Returning to the crucial issue of permissable lot size, Table 5 shows that six of Monroe County's 19 towns do have zoning provisions permitting lots of size deemed optimal by planners. The existence of a zoning ordinance providing for such land use, however, is no automatic guarantee that a sufficient supply of such land is available in the proper locations. In fact, the zoning classification may simply encompass an area which is already filled by the permitted uses or it may be located in an area

unsuited for such use.

A comprehensive land use inventory for Monroe County compiled in 1963 by the New York State Department of Public Works as part of its Metropolitan Transportation Study demonstrated this lack of available land in the smaller lot categories. Using a computer print-out supplied by the department which listed all parcels of vacant land zoned for residential use, a tabulation was made of vacant parcels twenty acres[1] or larger located in the six towns with the optimal minimum zoning provisions. This showed that only a few of the optimum type parcels were still vacant in 1963 in the towns of Chili, Henrietta and Brighton,

[1]Twenty acres were considered the minimum size for efficient tract development.

and most of these were situated in undesirable or unsuitable locations (e.g., around the airport, along the river, in areas of hilly land.) A relatively large number of vacant parcels in the town of Irondequoit are located in areas of steep slopes in the vicinity of Durand Eastman Park. According to the Monroe County Planning Council:

> "Development possibilities (in these areas)are extremely restricted. Much of these areas should remain permanently in open uses, and where urban development does take place it should be on a very low density basis to minimize problems of site development."[1]

This leaves only the towns of Gates and Greece with significant supplies of vacant land in optimal density categories. But even in these towns natural character-

[1]Monroe County Planning Council: Background for Planning, December 1962, p.9.

istics make efficient development of many of these parcels impossible:

> "Along the shore of Lake Ontario the land is almost continuously flat or marshy.
>
> "Areas with problems of intermeidate degree . . . occur most extensively in a band extending along the north side of Ridge Road where shallow soils and flat terrain combine to cause difficulties.
>
> "South of (the area between Ridge Road and Spencerport Road) none of the wet lands or flat lands . . . are very extensive, but interspersed as they are among areas of sloping ground, they will have a retarding effect upon the overall development of this part of the county."[1]

Two additional factors to be considered in this context are: (1) the available supply of vacant land of optimum density zoning has most certainly

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[1]Ibid., pp. 11,12.

shrunk even further since 1963 when the land use analysis was conducted, and (2) the fact that land is zoned for a certain type of residential use does not necessarily mean the present owners will make it available for such use.

It is clear that a serious imbalance exists between the demand for low cost homes and the willingness of the towns to provide a zoning framework which would permit their construction. In fact, while the demand has been increasing, seven of the nineteen towns have raised their minimum requirements for lot and/or dwelling sizes over the past three years! Town zoning is running on a collision course with the needs of the metropolitan community.

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Reasons for Low Density Zoning

So far it has been established that the density ranges and structural sizes mandated by the zoning ordinances in the towns of Monroe County are considerably above those recommended by planning experts, and it has been shown that even in the few towns which have allocated some land to zoning categories fully within the optimum density range the supply of such land is dwindling or unusable due to locational disadvantages. Thus, the question arises: Why are the towns so unresponsive to the demonstrated needs of the county as a whole? There are three major reasons for this unresponsiveness which can be categorized under the headings of aesthetics, economics, and desire for exclusiveness.

EXHIBIT A

The first of these reasons, aesthetics, has already been discussed in the preceding section. It derives from the absence of mixed and flexible residential zoning. Each zoning category consists of large plots of land upon which a rigid stamp of uniformity is impressed by prevailing zoning restrictions. While this type of uniformity appears to be desirable to the towns for medium and high cost housing it seems to be unacceptable for low cost housing.

The economic reasons for low density zoning are perhaps more significant than any of the others. Fiscal pressures on local government have evoked increasing concern with land use and its fiscal consequences. Today the so-called "fiscal zoning game" is played by virtually all

developing suburbs. Its rules are simply to permit only those types of land uses which add enough assessed valuation to the tax base to finance the municipal services required. In the case of dwellings the paramount consideration revolves around school taxes. School taxes in the towns of Monroe County account for the lion's share of the total fiscal burden. Since experience shows that low income families tend to have more children than high income families the addition of low cost housing results in an incremental expense for public education which is much larger than the incremental yield of the expansion of the tax base.

To illustrate the severity of this problem, the school district of West Irondequoit would presently require an addition of $32,464 in full value to its

tax base to fully finance the additional property tax levy required for <u>one</u> additional public school pupil! The Pittsford School District, to cite another example, would need a full value increment of $38,280 for each additional pupil!

Thus, it is quite apparent why the suburban towns are attempting to maximize their tax base by reserving their land for primarily high value uses.

> "There was a county in northern New Jersey which acquired a very large industrial plant. It promptly rezoned the rest of its land as far as possible to one acre lot zoning. In other words, the community was saying 'now that we have the plant, we would like to house the executives of the plant, but the workers with their children may go somewhere else with their lower cost houses'. . ."[1]

The only way to stop the fiscal zoning game and thereby eliminate a primary motive for low density, high value zoning is to

[1] Jerome P.Pickard: Opportunities and Problems, American Society of Planning Officials, 1966.

solve the fiscal needs of communities on something more than a small local unit basis. The most obvious approach to the solution of this problem is to find a way in which to decrease reliance on property taxation for the support of the broader governmental services including public education, health welfare, etc.

> ". . . property taxation is not a fair source of revenue for the support of services benefiting the entire urban area. Some other tax source, which reaches all the people (benefiting from these services) would be more equitable."[1]

Some degree of equalization of educational cost burdens has already been attained through state aid for education and the allocation of a sizable share of the county sales tax to school districts. Even greater equalization is necessary, however, to deprive the fiscal zoning game of one of

[1] University of North Carolina, Institute of Government, Greensboro Suburban Analysis.

its prime incentives.

The third reason for low density zoning stems from town residents' desire for exclusiveness. Many suburban residents formerly lived in cities. Their move to suburban surroundings was often motivated by the desire to leave a deteriorating environment. To prevent the recurrence of such deterioration they developed into avid advocates of "exclusivity zoning." Insisting on their inherent rights to preserve and even upgrade their chosen surroundings, they have denied the rights of others by molding their zoning ordinances to make it financially impossible for them to live in similarly desirable areas. Thus it happens that in some suburban towns of Monroe County individuals working as school teachers, production workers, etc. are unable to make their homes in the towns in which they work.

This third reason is probably the least justifiable argument in support of restrictive zoning, particularly since most new building would take place in areas which are as yet completely undeveloped and would, therefore, not affect existing residential developments.

Conclusion

It has been demonstrated in the preceding analysis that the demand for moderate and low income housing, of both rental and purchasable units, is growing at a rapid rate. It has also been shown that the supply of such housing has failed to keep pace with the growth in demand. The resulting gap between supply and demand has been widening each year and now poses a serious threat to the economic health of this community. It is stymieing industry's efforts to attract needed manpower, it is

crowding a large portion of low income families into city slums, it inflates the price of available units and land, it prevents older couples from purchasing smaller homes requiring a minimum of maintenance efforts, and it may soon make it impossible for many young newly married Rochester couples to find decent dwellings so that they may remain in this community.

The basic reasons for the lack of supply have been identified as rising costs of construction, soaring costs of land and town zoning practices.

Although unit costs of construction appear not to have risen faster than per capita income and should, therefore, not be viewed as a major cause of the housing shortage, a breakthrough in the technology of home and apartment construction could be

a significant factor in reducing the gap between demand and supply.

Land costs must assume a large share of the blame for the shortage of moderate and low income housing and should be a principal target of any corrective action. While the Rochester area has vast reserves of vacant acreage, much of this acreage is controlled by interests withholding it from the market and thereby stimulating the soaring growth of land prices. To solve this problem a new approach to the taxation of vacant land may have to be developed which would make it substantially less profitable for land speculators to limit the supply of land.

Town zoning which could have mitigated the impact of rising unit costs of land and construction by providing an adequate supply

of reasonable sized lots and structures has, instead, compounded the rise in prices by mandating even larger lots and larger homes than even before. Proper remedial action for the situation must include an attack on the basic causes responsible for current zoning practices.

The economic causes, consisting primarily of the tax advantages which are the prize of a well-played fiscal zoning game, can only be removed by county and state legislative action. Such action should be aimed at broadening the property tax base for the financing of the costs of public education beyond the present tax district boundaries and at greater emphases on revenue sources which are not related to real property.

Town residents' opposition to less

restrictive zoning for reasons of aesthetics and exclusiveness can only be overcome through more imaginative zoning. New communities now being planned and constructed in many parts of this nation offer convincing proof that combinations of low and high density land use can result in both aesthetically attractive and marketable residential developments. A first and very promising step in this direction is contained in the proposed zoning ordinance for the town of Pittsford. The Monroe County Planning Council which prepared this ordinance suggested that average density development be permitted in the town for the purpose of allowing:

> "Variation in lot size in areas proposed for development . . . to encourage flexibility of design, to enable land to be developed in such a manner as to promote its most appropriate use, to facilitate the adequate and economical

> provision of streets and utilities, and to preserve the natural and scenic qualities of open space . . ."[1]

The major impetus for a change in the towns' current zoning practices must come from two sources, the Monroe County Planning Council and the informed citizens of this community.

The county planning body should study and quantify the need for the various types of land uses required by this growing community. It should be given the power, by state law, to determine which general areas in the county are best suited to accomodate the needed land uses and to advise and assist the towns in the implementation of these broad land use mandates into actual zoning. This is an extremely important responsibility which requires the utmost in ingenuity, imagination and good judgement. It is not

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1 Monroe County Planning Council: Proposed Zoning Ordinance, Town of Pittsford, 1965.

intended to deprive towns of their zoning powers but rather to assign to each town a share of suburbia's responsibility for land use benefiting the entire metropolitan area. It is the task of the individual towns to discharge this responsibility in a manner which adds rather than detracts from the desirability of the town as a community.

An informed citizenry can be of invaluable help in bringing town zoning up to date. A growing number of community leaders are becoming aware of the potentially disastrous consequences of our housing shortage and its relationship to town zoning. They realize that the welfare of the well-to-do is closely intertwined with that of the moderate and low income earner, that the City of Rochester is limited in its ability to provide additional housing for this latter

group due to lack of land, and that, consequently, the continued growth and prosperity of the entire metropolitan community hinges on the towns' willingness to take steps towards a solution of the grave problem. It is this type of citizen who must provide local leadership and convince his elected governmental officials and the members of his planning board that the time has come to create a more flexible zoning framework which, while protecting existing development, permits the development of available vacant land to serve the needs not only of a favored segment of the population but of all citizens of our community.

If such leadership is not provided by the planning council and the citizenry, this community is inviting either economic stagnation or possibly corrective action by the federal government or the courts. This

latter possibility is not as remote as it sounds as these concluding quotations from a recent court decision show:

> "Zoning is a means by which a governmental body can plan for the future--it may not be used as a means to deny the future. . .
>
> "It is clear . . . that the general welfare is not fostered or promoted by a zoning ordinance designed to be exclusive and exclusionary.
>
> "A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities cannot be held valid . . ."[1]

[1] National Land and Investment Company and Dorothy M.Ennis vs. Harold E.Kohn and Edith Kohn, his wife, Intervenors, Appellants. Appeal of BOARD OF ADJUSTMENT OF EASTTOWN TOWNSHIP. Supreme Court of Pennsylvania, November 9, 1965, Rehearings Denied January 17, 1966.

P. U. D.

A MODEL PLANNED UNIT DEVELOPMENT ARTICLE FOR A TOWN ZONING ORDINANCE

MONROE COUNTY PLANNING COUNCIL

ROCHESTER CENTER FOR GOVERNMENTAL AND COMMUNITY RESEARCH, INC.

March, 1970

EXHIBIT B

A MODEL PLANNED UNIT DEVELOPMENT (PUD) ARTICLE FOR A TOWN ZONING ORDINANCE

Prepared by the

MONROD COUNTY PLANNING COUNCIL

and the

ROCHESTER CENTER FOR GOVERNMENTAL AND COMMUNITY RESEARCH, INC

March, 1970

(Third Draft)

EXHIBIT B

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INTRODUCTION

The Planned Unit Development (PUD) concept involves planning on the level of a neighborhood community rather than on the level of an individual lot or single use. Generally, the PUD concept applies most effectively to project areas exceeding 100 acres in size. PUD objectives are comprehensive and involve viewing the components of a development as they relate to the needs of an entire town and, even, to a metropolitan area. A PUD achieves flexibility and efficiency in land use. A PUD conserves our limited land resources by stopping current patterns of urban sprawl development. A PUD provides a more convenient, conflict-free environment through the integration of commercial, recreational, educational, vocational and open space land uses with residential uses at neighborhood levels. A PUD includes a variety of residential types

suitable for all age groups and income levels. In short, a PUD provides a living environment superior to that generally achievable under standard zoning and subdivision regulations.

The PUD article presented here is intended to provide adequate protection for a responsible community and to channel and encourage the developer in the application of good design and planning. The article falls into two major parts: (1) a statement of intent, objectives and general requirements, and (2) an application procedure and approval process. The intent states that the PUD ordinance is meant to replace the usual approval process involving rigid use and bulk specifications with the actual PUD plan submitted by the developer. The objectives and requirements provide a developer with a ready general guide showing the minimum expectations of a town in

respect to a PUD.

The General Requirements permit a PUD to be located in any part of the town where an applicant can demonstrate that his holdings meet PUD objectives. The use of a variety of housing types is encouraged. Depending on size and needs, accessory commercial, service and other non-residential uses are allowed and encouraged. Intensity of land use ("density") is determined by the characteristics of a particular proposal.

The Application Procedure and Approval Process (flow charted on the following page by functional role) are designed to safeguard public interests while allowing developers great flexibility and freedom. The article provides standards and proced--ures by which the Planning Board and Town Board may evaluate a PUD proposal. The Sketch Plan review is thorough and permits the Town Board-- on the basis of Planning

Board, public,[1] and professional advice-- to give early approval to a project. The key here is commitment at an early time in project development through a clear spelling out of administrative roles and responsibilities. By this, it is hoped that both developers' money and administrative time will be saved through quick elimination or modification of inadequate PUD proposals. Once PUD zoning is granted by the Town Board (step 7 on the flow chart), the approval of preliminary and final plans is deemed to be the technical function of the Planning Board-- with only a nominal role being played by the Town Board unless the sketch plan is substant-

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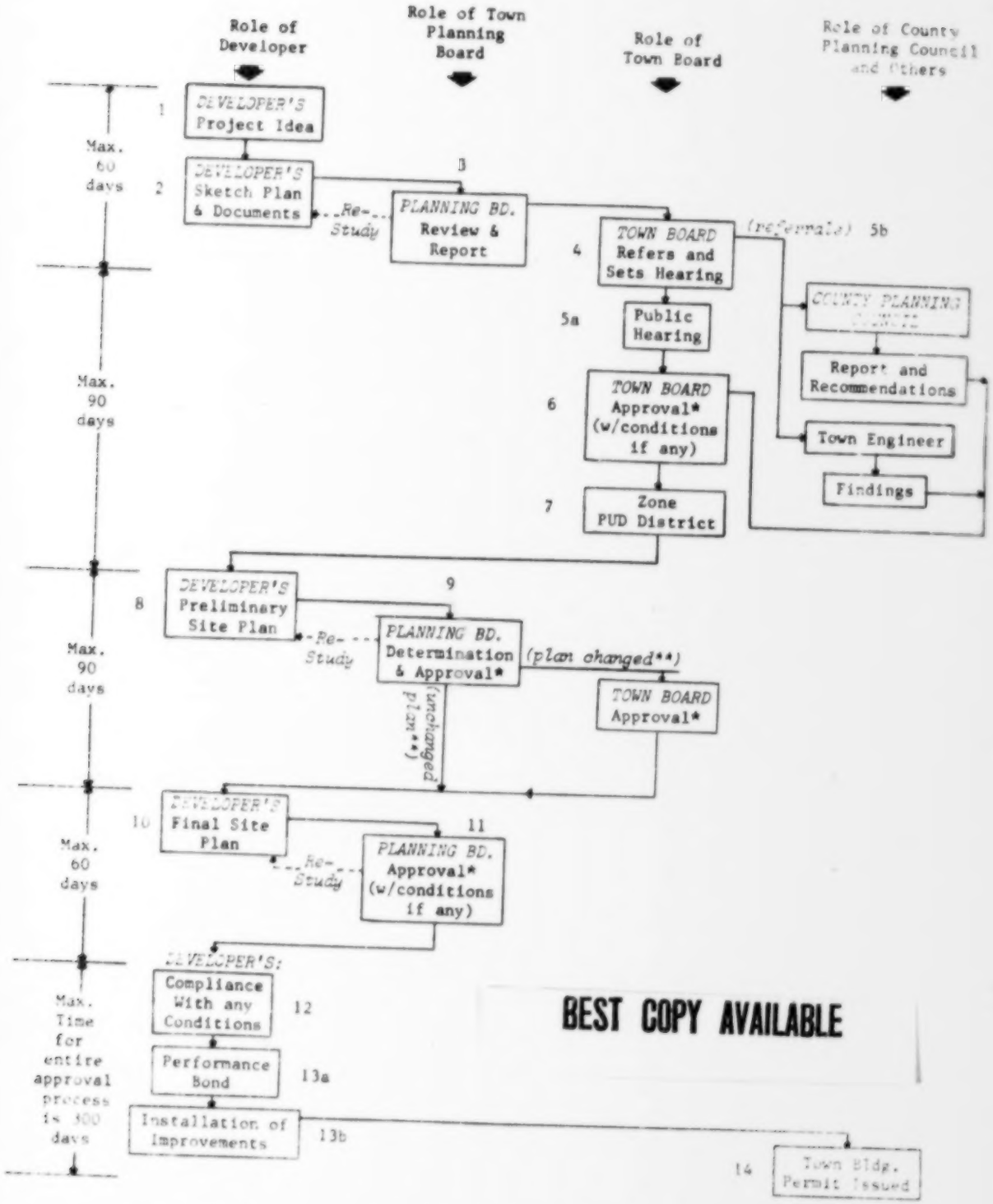
[1] Prior to zoning a PUD district, the Town Board holds a public hearing on the PUD proposal (step 5a on flow chart). Note that there is normally only this one public hearing per project and that it is held at the sketch plan stage.

ially altered in its preliminary or final form.

EXHIBIT B

PROCEDURAL FLOW OF THE

PROPOSED PLANNED UNIT DEVELOPMENT ORDINANCE FOR TOWNS



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* Unfavorable reports or disapprovals by the Planning Board are subject to hearing before Town Board upon initiative of the developer. Town Board disapprovals are final.

** Sketch Plan

EXHIBIT B

The approval process could take a maximum of 300 days from first submission to issuing of building permit. This 300 day period is maximum provided an applicant acts at his earliest opportunity after each town decision. While a large PUD will probably require at least 300 days, smaller PUD's should be processed far more quickly. Although 300 days, almost an entire year, seems a long time for an application to be approved, it should be noted that commitment occurs at step 7, within 5 months time. The remaining steps involve detailed design development which take this length of time as a matter of course and considering the investment involved, actually demand review periods of this nature. A good architect designing a single $50,000 home would take at least two or three months to develop his plans. How much more important, then, is a $50,000,000

development.

A PUD may be staged. However, if any plan requires more than 24 months to be completed, a PUD must be staged and a staging plan must be developed.

After initial construction and occupancy, changes from the PUD plan are to be processed as special permit requests to the Planning Board--although use changes require Town Board approval.

This model PUD article is intended for direct incorporation into a town's existing zoning ordinance. It is considered enforceable under existing (1969) New York State laws. In short, this ordinance is suitable for adoption by all Monroe County towns without changes-- other than changes in format to fit a particular town zoning ordinance.

A MODEL PLANNED UNIT DEVELOPMENT ARTICLE FOR A TOWN ZONING ORDINANCE

Third Draft (March, 1970)

ARTICLE O

SECTION 00-1-STATEMENT OF INTENT AND OBJECTIVES

A. Intent

It is the intent of this Planned Unit Development (PUD) article to provide flexible land use and design regulations through the use of performance criteria so that small-to-large scale neighborhoods or portions thereof may be developed within the Town that incorporate a variety of residential types and non-residential uses, and contain both individual building sites and common property wnich are planned and developed as a unit. Such a planned unit is to be designed and organized so as to be capable of

satisfactory use and operation as a separate entity without necessarily needing the participation of other building sites or other common property in order to function as a neighborhood. This article specifically encourages innovations in residential development so that the growing demands for housing at all economic levels may be met by greater variety in type, design, and siting of dwellings and by the conservation and more efficient use of land in such developments.

This article recognizes that while the standard zoning function (use and bulk) and the subdivision function (platting and design) are appropriate for the regulation of land use in areas or neighborhoods that are already substantially developed, these controls represent a type of pre-

regulation, regulatory rigidity and uniformity which may be inimical to the techniques of land development contained in the planned unit development concept. Further, this article recognizes that a rigid set of space requirements along with bulk and use specifications would frustrate the application of this concept. Thus, where PUD techniques are deemed appropriate through the re-zoning of land to a Planned Unit Development District by the Town Board, the set of use and dimensional specifications elsewhere in this Ordinance are herein replaced by an approval process in which an approved plan becomes the basis for continuing land use controls.

B. Objectives

In order to carry out the intent of this

article, a PUD shall achieve the following objectives:

1. A maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), types of housing, lot sizes and community facilities available to existing and potential Town residents at all economic levels;
2. More usable open space and recreation areas;
3. More convenience in location of accessory commercial and service areas;
4. The preservation of trees, outstanding natural topography and geologic features and prevention of soil erosion;
5. A creative use of land and related physical development which allows

an orderly transition ofland from rural to urban uses;

6. An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs;
7. A development pattern in harmony with the objectives of the Master Plan;
8. A more desirable environment than would be possible through the strict application of other articles of this Ordinance.

SECTION 00-2 - GENERAL REQUIREMENTS FOR PLANNED UNIT DEVELOPMENTS

A. Minimum Area: Under normal circumstances, the mimimum area required to qualify for a Planned Unit Development District shall be one hundred (100) contiguous acres of land. Where the applicant can

demonstrate that the characteristics of his holdings will meet the objectives of this article, the Planning Board may consider projects with less acreage.

B. Ownership: The tract of land for a project may be owned, leased or controlled either by a single person, or corporation or by a group of individuals or corporations. An application must be filed by the owner or jointly by owners of all property included in a project. In the case of multiple ownership, the Approved Plan shall be binding on all owners.

C. Location of PUD District: The PUD District shall be applicable to any area of the Town where the applicant can demonstrate that the characteristics of his holdings will meet the

objectives of this article.

D. Permitted Uses: All uses within an area designated as a PUD District are determined by the provisions of this section and the approved plan of the project concerned.

1. Residential Uses: Residences may be of any variety of types. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this article. However, at least thirty-five percent (35%) of the total number of dwelling units within any PUD shall be in single-family, detached structures.*

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2. Accessory Commercial, Service and Other Non-Residential Uses: Commercial, service and other non-residential uses may be permitted (or required) where such uses are scaled primarily to serve the residents of the PUD. The following proportions are deemed to be in keeping with this intent under normal circumstances:

* EDITOR'S NOTE: This figure is based purely on subjective considerations, the desire to preserve a "suburban character". Ideally, no figure would be necessary, and this particular element, as all PUD elements, should be accepted or rejected on the merits of the submitted plan. The insertion, alteration, or deletion of this particular provision should be determined solely by the Town involved, based on its own development goals.

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a. Where the PUD contains one hundred (100) or more dwelling units, a maximum of twenty-four hundred (2,400) square feet of floor area for every one hundred (100) dwelling units may be used for limited commercial and/or service uses. Such commercial or service area may be in separate buildings or incorporated within two-family or multi-family structures or in suitable combinations of these alternatives.

b. Where the PUD contains five hundred (500) or more dwelling units, a maximum of one acre of land for every one-hundred (100) dwelling units may be used for commercial and/or service

purposes.

c. Where the PUD contains one thousand (1,000) or more dwelling units, five (5) acres of land for each one hundred (100) dwelling units may be used for compatible industry in addition to the permitted commercial and service uses.

3. Customary accessory or associated uses, such as private garages, storage spaces, recreational and community activities, churches and schools shall also be permitted as appropriate to the PUD.

E. Intensity of Land Use: Because land is used more efficiently in a PUD, improved environmental quality can often be produced with a greater number of dwelling units per gross building acre than usually permitted in traditionally zoned districts. The Town

Board shall determine in each case the appropriate land use intensity or dwelling unit density for individual projects. The determination of land use intensity ratings or dwelling unit densities shall be completely documented, including all facts, opinions and judgments justifying the selection of the rating or density.

F. Common Property in the PUD: Common property in a PUD is a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the

improvement, operation and maintenance of such common property and facilities, including private street, drives, service and parking areas and recreational and open space areas.

SECTION 00-3 - PLANNED UNIT DEVELOPMENT APPLICATION PROCEDURE AND ZONING APPROVAL PROCESS

A. General

Whenever any Planned Unit Development is proposed, before any permit for the erection of a permanent building in such Planned Unit Development shall be granted, and before any subdivision plat of any part thereof may be filed in the office of the Monroe County Clerk, the developer or his authorized agent shall apply for and secure approval of such Planned Unit Development in accordance with the following procedures.

B. Application for Sketch Plan Approval

1. In order to allow the Planning Board and the developer to reach an understanding on basic design requirements prior to detailed design investment, the developer shall submit a sketch plan of his proposal to the Planning Board. The sketch plan shall be approximately to scale, though it need not be to the precision of a finished engineering drawing; and it shall clearly show the following information:

a. The location of the various uses and their areas in acres;

b. The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private;

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c. Delineation of the various residential areas indicating for each such area its general extent, size and composition in terms of total number of dwelling units, approximate percentage allocation by dwelling unit type (i.e., single-family detached, duplex, townhouse, garden apartments, high-rise), and general description of the intended market structure (i.e., luxury, middle-income, moderate-income, elderly units, family units, etc.); plus a calculation of the residential density in dwelling units per gross acre (total area including interior roadways) for each such area.

d. The interior open space system;

e. The overall drainage system;

f. If grades exceed three percent

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(3%), or portions of the site have a moderate to high susceptibility to erosion,* or a moderate to high susceptibility to flooding and ponding,* a topographic map showing contour intervals of not more than five (5) feet of elevation shall be provided along with an overlay outlining the above susceptible soil areas, if any;

g. Principal ties to the community at large with respect to transportation, water supply and sewage

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* NOTE: Maps showing soil areas and classification for the Towns of Monroe County have been prepared by the Monroe County Planning Council and the Soil Conservation Service. These maps designate general soil characteristics, and are available for inspection at the Town Hall and the County Office Building. Where a potentially significant development problem exists, a special on-site investigation should be conducted.

disposal;

h. General description of the provision of other community facilities, such as schools, fire protection services, and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated;

i. A location map showing uses and ownership of abutting lands.

2. In addition, the following documentation shall accompany the sketch plan:

a. Evidence of how the developer's particular mix of land uses meets existing community demands;*

b. Evidence that the proposal is compatible with the goals of the official Master Plan, if any;

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*NOTE: Evidence as to demands may be in the form of specific studies or reports initiated by the developer or in the form of references to existing studies or reports relevant to the project in question.

c. General statement as to how common open space is to be owned and maintained;

d. If the development is to be staged, a general indication of how the staging is to proceed. Whether or not the development is to be staged, the sketch plan of this section shall show the intended total project;

e. Evidence of any sort in the applicant's own behalf to demonstrate his competence to carry out the plan and his awareness of the scope of such a project, both physical and financial.*

Note: The developer should be aware that at all subsequent stages, plans must be prepared by professionally competent site planners. Thus, he is advised to engage such persons at the earliest necessary time.

3. The Planning Board shall review the sketch plan and its related documents; and shall render either a favorable report to the Town Board or an unfavorable report to the applicant. The Planning Board may call upon the County Planning Council, the Soil Conservation Service, and any other public or private consultants that they feel are necessary to provide a sound review of the proposal.

a. A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering PUD Districting. It shall be based on the following findings which shall be included as part of the report:

(i) The proposal conforms to the Master Plan.

(ii) The proposal meets the intent

and objectives of Planned Unit Development as expressed in Section 00-1.

(iii) The proposal meets all the general requirements of Section 00-2.

(iv) The proposal is conceptually sound in that it meets a community need and it conforms to accepted design principals in the proposed functional roadway system, land use configuration, open space system, drainage system, and scale of the elements both absolutely and to one another.

(v) There are adequate services and utilities available or proposed to be made available in the construction of the development.

b. An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the

applicant what might be necessary in order to receive a favorable report. The applicant may, within ten (10) days after receiving an unfavorable report, file an application for PUD Districting with the Town Clerk. The Town Board may then determine on its own initiative whether or not it wishes to call a public hearing.

4. The chairman of the Planning Board shall certify when all of the necessary application material has been presented; and the Planning Board shall submit its report within sixty (60) days of such certification. If no report has been rendered after sixty (60) days, the applicant may proceed as if a favorable report were given to the Town Board.

C. Application for PUD Districting

1. Upon receipt of a favorable report from the Planning Board, or upon its own determination subsequent to an appeal from an unfavorable report, the Town Board shall set a date for and conduct a public hearing for the purpose of considering PUD Districting for the applicant's plan in accordance with the procedures established under Section 264 and Section 265 of the Town Law or other applicable law, said public hearing to be conducted within forty-five (45) days of the receipt of the favorable report or the decision or appeal from an unfavorable report.

2. The Town Board shall refer the application to the County Planning

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Council for its analysis and recommendations; and the Town Board shall also refer the application to the Town Engineer for his review.

a. The Town Board shall give the County Planning Council at least thirty (30) days to render its report; and within forty-five (45) days after the public hearing, the Town Board shall render its decision on the application.

b. The Town Engineer shall submit a report to the Town Board within thirty (30) days of the referral duly noting the feasibility and adequacy of those design elements under his sphere of interest. This report need only

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concern itself with general conceptual acceptance or disapproval, as the case may be, and in no way implies any future acceptance or rejection of detailed design elements as will be required in the later, site plan review stage. The Town Engineer may also state in his report any other conditions or problems that must be overcome before consideration of acceptance on his part.

D. Zoning for Planned Unit Developments

1. If the Town Board grants the PUD Districting, the zoning map shall be so notated. The Town Board may, if it feels it necessary in order to fully protect the public health, safety, and welfare of the community, attach to its zoning

resolution any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, visual and acoustical screening, land use mixes, order of construction and/or occupancy, circulation systems both vehicular and pedestrian, availability of sites within the area for necessary public services such as schools, fire houses, and libraries, protection of natural and/or historic sites, and other such physical or social demands. The Town Board shall state at this time its findings with respect to the land use intensity or dwelling unit density as called for in Section 00-2-E.

2. PUD Districting shall be conditional upon the following:

a. Securing of final site plan approval in accordance with the procedures set forth in Section 00-4, supra.

b. Compliance with all additional conditions and requirements as may be set forth by the Town Board in its resolution granting the PUD District.

SECTION 00-4 - SITE PLAN APPROVAL PROCESS

A. Application for Preliminary Site Plan Approval

Application for preliminary site plan approval shall be to the Planning Board and shall be accompanied by the following information prepared by a licensed engineer, architect and/or landscape architect:

1. An area map showing applicant's entire holding, that portion of the applicant's property under

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consideration, and all properties, subdivision, streets, and easements within five hundred (500) feet of applicant's property.

2. A topographic map showing contour intervals of not more than five (5) feet of elevation shall be provided.

3. A preliminary site plan including the following information:

a. Title of drawing, including name and address of applicant.

b. North point, scale and date.

c. Boundaries of the property plotted to scale.

d. Existing watercourses.

e. A site plan showing location, proposed use and height of all buildings, location of all parking and truck-loading areas, with access and egress drives

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thereto; location and proposed development of all open spaces including parks, playgrounds, and open reservations; location of outdoor storage, if any; location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences; description of method of sewage disposal* and location of such facilities; location and size of all signs; location and proposed development of buffer areas; location and design of lighting facilities; and the amount of building area proposed for non-residential uses, if any.

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*NOTE: All methods of sewage disposal must conform to the Monroe County Pure Waters Master Plan and meet all other State and County requirements.

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4. A tracing overlay showing all soils areas and their classifications, and those areas, if any, with moderate to high susceptibility to flooding, and moderate to high susceptibility to erosion. For areas with potential erosion problems the overlay shall also include an outline and description of existing vegetation.

B. Factors for Consideration

The Planning Board's review of a preliminary site plan shall include, but is not limited to the following considerations:

1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.

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2. Adequacy and arrangement of pedestrian traffic access and circulation including: separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic, and pedestrian convenience.
3. Location, arrangement, appearance and sufficiency of off-street parking and loading.
4. Location, arrangement, size and design of buildings, lighting and signs.
5. Relationship of the various uses to one another and their scale.
6. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or a noise deterring buffer between

adjacent uses and adjoining lands.

7. In the case of apartment houses or multiple dwellings, the adequacy of usable open space for playgrounds and informal recreation.
8. Adequacy of storm water and sanitary waste disposal facilities.
9. Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.
10. Protection of adjacent properties against noise, glare, unsightliness, or other objectionable features.
11. Conformance with other specific charges of the Town Board which may have been stated in the zoning resolution.

In its review the Planning Board may consult with the Town Engineer and other Town and County officials, as well as with representatives of Federal and State agencies including the Soil Conservation Service and the New York State Department of Conservation. The Planning Board may require that exterior design of all structures be made by, or under the direction of, a registered architect whose seal shall be affixed to the plans. The Planning Board may also require such additional provisions and conditions that appear necessary for the public health, safety and general welfare.

C. Action on Preliminary Site Plan Application

Within ninety (90) days of the receipt of the application for preliminary site plan approval, the Planning Board shall act on it. If no decision is made within said ninety-day period, the

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preliminary site plan shall be considered conditionally approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is conditionally approved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report.

The Planning Board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan, of which conformance with, shall be considered a condition of approval. Such recommendations shall be limited, however, to siting and dimensional details within general use areas; and shall not significantly alter the sketch plan as it was approved in the zoning proceeding.

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If the preliminary site plan is disapproved, the Planning Board's statement shall contain the reasons for such findings. In such a case the Planning Board may recommend further study of the site plan and resubmission of the preliminary site plan to the Planning Board after it has been revised or redesigned.

No modification of existing stream channels, filling of lands with a moderate to high susceptibility to flooding, grading or removal of vegetation in areas with moderate to high susceptibility to erosion, or excavation for and construction of site improvements shall begin until the developer has received preliminary site plan approval. Failure to comply shall be construed as a violation of the Zoning Ordinance and, where nec-

essary, final site plan approval may require the modification or removal of unapproved site improvements.

D. Request for Changes in Sketch Plan

If in the site plan development it becomes apparent that certain elements of the sketch plan, as it has been approved by the Town Board, are unfeasible and in need of significant modification, the applicant shall then present his solution to the Planning Board as his preliminary site plan in accordance with the above procedures. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the zoning resolution. If a negative decision is reached, the site plan shall be considered as disapproved. The developer may then, if he wishes, produce another site plan in conformance

with the Approved Sketch Plan. If an affirmative decision is reached, the Planning Board shall so notify the Town Board stating all of the particulars of the matter and its reasons for feeling the project should be continued as modified. Preliminary site plan approval may then be given only with the consent of the Town Board.

E. Application for Final Detailed Site Plan Approval

After receiving conditional approval from the Planning Board on a preliminary site plan, and approval for all necessary permits and curb cuts from state and county officials, the applicant may prepare his final detailed site plan and submit it to the Planning Board for final approval; except that if more than twelve (12) months has elapsed between the time of the Planning Board's report

on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review. The final detailed site plan shall conform substantially to the preliminary site plan that has received preliminary site plan approval. It should incorporate any revisions or other features that may have been recommended by the Planning Board and/or the Town Board at the preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.

F. Action on the Final Detailed Site Plan Application

Within sixty (60) days of the receipt of the application for final site plan approval, the Planning Board shall render a decision to the applicant and so notify the Town Board. If no decision is made within the sixty-day period, the final site plan shall be considered approved.

1. Upon approving an application the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Building Inspector who shall then issue a building permit to the applicant if the project conforms to all other applicable requirements
2. Upon disapproving an application, the Planning Board shall so inform the Building Inspector. The Planning Board shall also notify

the applicant and the Town Board in writing of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.

G. Staging

If the applicant wishes to stage his development, and he has so indicated as per Section 00-3-B(2)(d), then he may submit only those stages he wishes to develop for site plan approval in accordance with his staging plan. Any plan which requires more than twenty-four (24) months to be completed shall be required to be staged; and a staging plan must be developed. At no point in the development of a PUD shall the ratio of non-residential to residential acreage or the dwelling unit ratios between the several different housing types for that por-

tion of the PUD completed and/or under construction differ from that of the PUD as a whole by more than twenty percent (20%).

SECTION 00-5 - OTHER REGULATIONS APPLICABLE TO PLANNED UNIT DEVELOPMENTS

A. Regulation after Initial Construction and Occupancy

For the purposes of regulating and development and use of property after initial construction and occupancy, any changes other than use changes shall be processed as a special permit request to the Planning Board. Use changes shall also be in the form of a request for special permit except that Town Board approval shall be required. It shall be noted, however that properties lying in Planned Unit Development Districts are unique and shall be so considered by the Planning Board or Town Board when evaluating these

requests; and maintenance of the intent and function of the planned unit shall be of primary importance.

B. Site Plan Review

Site Plan Review under the provisions of this article shall suffice for Planning Board review of subdivisions under Town Subdivision Regulations, subject to the following conditions:

1. The developer shall prepare sets of subdivision plats suitable for filing with the Office of the Monroe County Clerk in addition to those drawings required above.
2. The developer shall plat the entire development as a subdivision; however, PUD's being developed in stages may be platted and filed in the same stages.
3. Final site plan approval under Section 00-4-F shall constitute

final plat approval under the Town Subdivision Regulations; and provisions of Section 276 of the Town Law requiring that the plat be filed with the Monroe County Clerk within ninety (90) days of approval shall apply.

SECTION 00-6 - FINANCIAL RESPONSIBILITY

No building permit shall be issued for construction within a PUD District until improvements are installed or performance bond posted in accordance with the same procedures as provided for in Section 277 of the Town Law relating to subdivisions. Other such requirements may also be established from time to time by the Town Board.

EXHIBIT B

A NOTE ON THE PREPARATION OF THIS PUD ARTICLE

This third draft of a model PUD article for town zoning ordinance is the result of staff work by the Monroe County Planning Council and the Rochester Center for Governmental and Community Research, Inc. (formerly the Rochester Bureau of Municipal Research, Inc.). Preparation of the article began in October 1968 as part of a series of reports being developed for the Metropolitan Housing Committee, chaired by Joseph C. Wilson (a citizens' committee jointly appointed by the City and County Managers in 1967).

A serious attempt has been made to include representatives from all parts of the community in the evolution of this model PUD article. As a result, representatives from area planning agencies, towns, various professional groups (Rochester Home

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Builders' Association, subdivision engineers, etc.) and private developers have participated in various drafting sessions. This third draft is the result of activities during 1969. New drafts of the article may be expected as improvements occur.

EXHIBIT C

Penfield Planning Board
June 9, 1970

ITEM NO. 3. The application of Meli Brothers Construction Company (Rose Meli), 1385 Empire Boulevard, Rochester, New York for a recommendation from the Planning Board to the Town Board for the renewal of a Top Soil and Excavation Permit under Section 24-3 of the Top Soil and Excavation Ordinance for approximately 30 acres of land located at 1385 Empire Boulevard.(South side of street)

This item was postponed until June 22, 1970

ITEM NO. 4. The application of Feno Pecora, 35 Woodhaven Drive, Rochester, New York for a recommendation from the Planning Board to the Town Board for the renewal of a Top Soil Removal and Excavation Permit underSection 24-3 of the Top Soil and Excavation Ordinance for approximately 37 acres of land located on the south side of Empire Boulevard near 50 Wilbur Tract Road and extending southerly toward Woodhaven Drive.

This item was postponed until June 22, 1970.

ITEM NO. 5. The application of J.C.Audino Inc., 1499 Scribner Road, Penfield, New York for an informal discussion with the Board regarding a proposed Subdivision on the east side of Scribner Road to be known as the "Beacon Hills" Subdivision.

Appearing for this application was Mr.Allen Jenkins of Jenkins, Warzer and Starks, Architect.

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Mr. Shaw wanted the record to show that before the presentation of this PUD, Mr. Myron Starks stepped down from the Board and did not take part in any of the presentation.

Mr.Shaw also explained that this was the first PUD interview before the Board and that at the seminar that the Rochester Home Builders sponsored, Mr.Simon suggested that the PUD hearings be done in private session, but that he did not favor private meetings. He then asked for a little forethought and restraint when it came time for the public to speak. Also, that this would be a preliminary hearing and each would be seeing for the first time, how the developer intends to proceed. Mr. Shaw then explained PUD in lay-mans terms and explained that there would be a public hearing when it goes before the Town Board.

Mr. Jenkins then stated that his firm was the consultant to the firm Denlock, Thomas & Grayle Associates, who represent Mr. Audino.

The site would be 95 acres of undeveloped land connecting with Scribner Road and Five Mile Line Road north of Atlantic Avenue. The utilities water and sanitary facilities on Scribner Road and water on Five Mile Line Road.

He gave a break down of the land use and these are included in the verbatum transcript.

The set back from Five Mile Line Road is 150 feet. A commercial and recreational

area clustered in the center of the property to form a community center as well as a recreational center. Town Houses are in conjunction with the Community center. The drumlin area, the high point of the property, is used for the garden type apartments. The lay out of roads and accesses provides pedestrian access throughout the site without crossing the road or drive. A pedestrian bridge and a tunnel under the road to provide access. The wooded areas will be preserved. The overall density would be 4 units per acre.

A five minute recess was taken to give the people a chance to see the maps and answer questions (or ask).

Mr. Bruce Wells of 60 Robert Road wanted to check the density. His figures showed a density of 5 units per acre.

Mr. Frank Sidoti, an attorney, spoke for area residents. He stated that he wished to present the petition only at this meeting and that he would speak at a future meeting.

Mr. Bill Buholtz of 1479 Shoecraft Road showed by his questions that he was confused by the PUD concept.

Mr. Shaw again attempted to explain the features.

Mr. Walter White of 43 Old Bard Circle, asked about the distribution of family houses.

Mr. Paul Madina of 1470 Five Mile Line Road was concerned about the sun set being cut off from his view and is against PUDs in

general.

Vita Clay of 35 Rodney Lane, Penfield was concerned about children going to the Webster School. She spoke of budgets, etc.

Mr. John Sullivan of 28 Robert Road asked if the PUD project was a corporate managed organization and about the Master Plan for Penfield.

Janet Gray of 35 Roberts Road spoke on the PUDs that she has knowledge of. Mr. Joseph Fraque of 38 Hitchcock Lane a former member of the Rochester Urban Renewal Development, was interested in the effect on the tax rate and does hope the building construction will be an asset to the Town of Penfield.

Mr. Vic Mazzara of 85 Hitchcock Lane asked if the apartments could be purchased.

AND mrs. Gossin had ideas on the subject.

Since no one else appeared to be heard on this application, this matter was TABLED by the Board for further study.

ITEM NO. 6 The application of Stanndco Development Inc., 40 Wildbriar Road, Rochester, New York to discuss a possible Planned Unit Development on properties owned by Martin and Gertrude Sander located at or near 2041 Penfield Road. The two parcels involved are Tax Account # 63-100 consisting of 104.49 acres and tax account # 63-000, a portion of the six acres.

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Mr. Myron Starks continued absent from the Board.

Mr. Tony Calderone appeared as the secretary of Stanndco Developers.

To place the property, it is west of Nine Mile Point Road and south of Penfield Road. On the west side is existing housing, on the south side the Perinton Town Line, and the east side id the O'Brien project with Wegman shopping area.

Mr. Louis Childs of Jenkins, Wurzer & Starks, then spoke describing the lay of the land. The high point of the property will be for the apartments and this will be the center of the site, then for the low flat area that is fed by a natural creek which runs through the lower portion of the site. All of the higher density of living would be centered in the center of the site with the single family dwellings towards the perimeter of the site. The road development consists of a large looproad and exits into Penfield Road. They are talking to O'Brien about having just one main road between the two projects that will exit onto Penfield Road. As this was a preliminary hearing, there will be further appearances.

Mr. Thomas Tho son asked about the time element and the amount of houses in a cluster development, and the type of house mix.

Dr. J.D. Hare of 52 Farmbrook Drive, asked if the PUD ordinance was too restrictive.

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Mr. Calderone feels that garages on the lower income houses (apartments) are not needed, and also, he disagrees with the set backs.

Mr. John Sullivan, Robert Road, was interested in the type of town house and the price range.

Mr. Paul Mandina of Five Mile Line Road asked how many units per acre.

EXHIBIT D

August 25, 1970

Page III

ITEM NO. 3 The application of Joseph C. Audino, 1499 Scribner Road, Penfield, New York for a recommendation from the Planning Board to the Town Board for the rezoning of approximately 97 acres of land on the east side of Scribner Road from Residential "AA" to Planned Unit Development Zone.

Before this presentation, Mr. Shaw, Chairman, asked the audience to limit their comments to a brief statement as he felt all presentations of the PUD should be heard publicly and at this point, the plans for definate utilities, etc. have not been worked out. On each PUD, there would be many meetings.

Mr. Joseph C. Audino, President of Hallmark Homes, appeared for this application. He presented aerial photos which showed the location of the property to be on the east side of Scribner Road and on the north by Five Mile Line Road with most of the area, just vacant land with about 25 acres of woods. There will be two proposed roads leading to Scribner Road and about 6 cul-de-sacs within the area. The "AA" lots would be 200 feet deep by 100 feet wide and would back up to wooded area. Then there would be lots the size of 140 feet by 80 feet . Also within this area is a home which is 165 years old which he

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proposed to leave in tact. 17 acres would be set aside for duplex houses.

Mr. John Bickmore, of Penfield Better Homes, stated that he favored the previous proposal, and asked why the proposal was turned down.

Mr. Bruce Wiles, 60 Roberts Road made a point about being surrounded by "AA" lots.

Mr. Joseph Simeone of 57 Timber Line feels that the area might produce a Commercial type area. That if this PUD were approved another developer might try a similar project and not be as conscientious as Mr. Audino.

Mr. Henry Dutcher, again representing Northwest Penfield Homeowners Association, made several objections to this proposal, and then held the mike and asked for questions from the audience.

Mr. Vic Mazzara, 85 Hitchcock Lane opposed.

Mr. John Sullivan, Robert Road felt that the resident who buys out here seems to loose the guaranty that was given to him at the time he moves into the area. And he resents having to constantly defend their positions.

Mr. Richard Harold, 876 Embury Road, stated that all of his tract 'donated' eight feet to the town and did not feel Mr.

Audino should keep using this term, also that the knoll that Mr. Audino proposes should be a thing of beauty because he feels that this is the highest point in the town and he does not want to see apartments there.

Mr. Dutcher again spoke to the point that people bought out here with the idea that the area would not change.

Mr. Robert Teamerson, the attorney for Mr. Audino, stated that there could be no guarantee about zoning, that over the years, the zoning has changed land then her referred to the Master Plan and stated that the PUD ordinance was being covered in this plan.

Mr. Robert Herman of 87 Hillary Lane, as Chairman of PACT which was formerly the Penfield Council for Human Relations, feel that this group (The Penfield Homeowners Association) is running scared. He stated he could not agree with the PUD because it did not have enough of a mix. And he asked about the engineer from Syracuse who was to be hired to do a layout for the PUD.

Mr. Shaw explained that this layout was not successful and why but that Stannco PUD was on file at the Town Hall and Mr. Herman could see it any time he wished.

Mr. Raymond Santirocco of 51 Kevin Drive, stated that the PUD was here and did not want the Board to disapprove this proposal

but to change that which was not acceptable.

Mr. Max Holtzberg said that he was the original inhabitant of Hallmark II and that there was never a mention that a PUD would go there. And he just does not want apartments or duplexes any where near him.

Mr. Nicholas Palusio of 151 City View Drive spoke in favor.

Mr. Joe McCue of 3 Bittersweet Circle, who is the Executive Vice President of the Rochester Home Builders Association, spoke in favor of this concept.

Kack DeVuyst 1420 Scribner Road, is in favor.

Mrs. Bickmore spoke in favor if the former proposal could be incorporated.

Mr. Audino felt he had to take out some of the former proposal to have something that the neighborhood would not object to.

Mr. Shaw asked the group if it was the multiple dwellings that were being opposed to, and then explained the mixture of double and single together on smaller streets, and wondered if this would be acceptable.

The group spokesman said that he could not answer.

Mr. Frank Lockner, 1512 Five Mile Line

would rather have Double A or have it remain empty.

Mr. Angelo Moretti, 1684 Scribner Road, objects to the added traffic and feels that the PUD should be east of the Febster Fairport Road.

Bob Blackmore, 18 Timberline Drive is for this proposal. He is new here from Illinois where they now have PUD and feels that it is working very well.

Since no one else appeared to be heard on this matter, this matter was TABLED by the Board for consideration by the full Board.

All of the Board Members present voted "aye".

ITEM NO. 4 The application of Euguen Hartung (Hershey Malone Assoc.) 1800 Penfield Road, Penfield, New York for final approval of a 46 lot subdivision to be known as the "Parkside Subdivision" and located on the south side of Whalen Road on the former Footer property and for a variance to permit lots of the size and area as shown on map filed, also set backs.

Mr. Hartung was at the meeting but had left, therefore, this item was postponed until September 15, 1970.

MISCELLANEOUS MATTERS

ITEM NO I The application of Arthur Treachers Fish and Chips of Monroe County, New York Inc., 945 Jefferson Road, Rochester, New York for an interview with the Board concerning approval of a site plan for a proposed restaurant to be located at 1968 Empire Blvd. in a commercially zoned area.

Postponed until September 15, 1970, no appearance.

TABLED MATTERS FROM THE AUGUST 11th MEETING

ITEM NO. 1 The application of Seneca Franchises, 7629 Oswego Road, Liverpool, New York to review the site plan of a proposed one hour martinizing dry cleaning store, not to be coin operated, to be located in a remodeled existing building at the intersection of Empire Blvd. and Creek Street, Prior coordination with the appropriate State and County authorities indicated their respective requirements will be met.

Postponed until September 15, 1970.

EXHIBIT D

PLANNING EXECUTIVE
September 22, 1970

The Board felt that they should stay 50 feet from the Trailer Court and leave all of the trees in that area. The Board later decided that it might be best to leave 50 feet along the east side.

This matter was TABLED for further consideration. After the engineers have had an opportunity to study the complete lay out including the State Road.

The application of Dimco Corporation

The application of Dimco Corporation, 1225 Ridgeway Avenue, Rochester, New York for a variance to allow the construction of dwellings in Section #3 and #4 of the Independence Ridge Subdivision with ground floor areas required in a Residential "A" District rather than those required in the present "AA" District.

After discussion by the Board, Mr. Thompson made and Mr. Bittner seconded the following resolution:

> RESOLVED, that the application of Dimco Corporation, 1225 Ridgeway Avenue, Rochester, New York for a variance to allow the construction of dwellings in Section #3 and #4 of the Independence Ridge Subdivision with ground floor areas

EXHIBIT D

> required in a Residential "A" District rather than those required in the present "AA" District. Section #3 consists of 39 lots and Section #4 consists of 49 lots. (23.8 acres), be and the same hereby is DENIED.

VOTE OF THE BOARD

George Shaw "aye" — Robert Thompson "aye"
Willard Parker "aye" — Arthur Bittner "aye"

Upon the motion, all of the Board Members having voted "Aye", the resolution was declared adopted.

JOSEPH AUDINO'S PUD

The application of Joseph C. Audino, 1499 Scribner Road, Penfield, New York for a recommendation from the Planning Board to the Town Board for rezoning of approximately 97 acres of land on the east side of Scribner Road from Residential "AA" to Planned Unit Development Zone, b

In discussing this application, the Board felt that this plan did not entail the concept of a PUD as presented in the Ordinance.

After much discussion, Mr. Bittner made and Mr. Thompson seconded the following resolution:

EXHIBIT D

RESOLVED, that the application of Joseph C. Audino, 1499 Scribner Road, Penfield, New York for a recommendation from the Planning Board to the Town Board for rezoning of approximately 97 acres of land on the east side of Scribner Road from Residential "AA" to Planned Unit Development Zone, be and the same hereby is DENIED for the following reasons:

1. A Planned Unit Development proposal is not consistent with the best overall use of the area.

VOTE OF THE BOARD

George Shaw "Aye" Arthur Bittner "Aye"
Robert Thompson "Aye" Willard Parker "Aye"

Upon the motion, all of the Board Members present having voted "Aye", the resolution was declared adopted.

Since there was no further business to come before the Board, the meeting was adjourned at 10:30 P.M. EDT.

EXHIBIT D

/s/ James B. Jones
James B. Jones
Clerk of the Board

NOTE: On the original resolution mailed to the applicant, the word Urban was used instead of the word Unit. PUD

EXHIBIT E

by James Hartman and seconded by John D. Williams that the following resolution be adopted;

RESOLVED, that the application of Thomas F. Frazer 2316 Lyell Ave., Rochester, N.Y. for approval of a one lot subdivision plot for Dr. Alex Braiman. Said property being located at 1722 Salt Rd. (Acct. #460-000) and in a double "A" Residential zone. Said parcel fronts 428 feet along Gloria Drive and is 1020 feet in depth, be and the same hereby is APPROVED.

VOTE OF THE BOARD

George Shaw, "AYE" Willard Parker, "AYE"
John Williams, "AYE" James Hartman, "AYE"
Richard C. Ade, "AYE"

Upon the motion, all of the Board members present having voted "AYE", the resolution was declared adopted.

ITEM # 1. The application of Jenkins-Wurzer-Starks, Architects and Planners, 1545 East Ave., Rochester, N.Y. for sketch plan approval of a proposed Planned Unit Development extending from Scribner Rd., east to Five Mile Line Rd. and from a line approximately 600 feet north of Roberts Rd. in a northerly direction for a distance of about 2600 feet; such Planned Unit Development to be known as

EXHIBIT E

"Beacon Hills".

Mr. Myron Starks, architect, Mr. Lew Chiles, architect, and Mr. Ronald Iman appeared in behalf of this application.

Mr. Starks presented basic information concerning this project. He stated it was planned on 97 acres of land, followed the basic Planned Unit Ordinance, stated general reasons for proposed use versus all single family dwellings, pointed out the objectives of a planned Unit Development, stated there would be no commercial uses within the PUD and that the density was less than the maximum allowed within the ordinance.

Mr. Starks also presented a sketch plan for approval and explained the plan to the Board and to the public. He presented a topography map also.

Various other information was also submitted concerning density, number of children to be generated, both non-school age and school age, tax revenues in Planned Unit Developments versus double "A" residential areas, location of the project in relation to adjacent properties and homes, street layouts, etc. The phase drawing was also submitted showing a potential three year construction period for the total project.

Various elevation cross sections showing the location of multi-story apartments

EXHIBIT E

were shown to note the fact they were no higher than two story residential dwellings.

Basic breakdown would show a total of 474 units on the 97 acres of land.

Following the formal presentation by Mr. Starks, a general discussion took place between the members of the Board, Mr. Starks and the audience. Various people in the audience did comment on the proposal.

No one else wished to be heard on this matter and the matter was tabled by the Board pending further study.

The Clerk of the Board was directed to inform the applicant of this action.

TABLED MATTERS

ITEM #1. The application of James Comparato, 217 Lake Ave., Rochester, N.Y. for an interview with the Board in connection with the development of 9.73 acres of land immediately north of Pen Fair Plaza at the corner of Webster Fairport Rd. and Penfield Rd. for an apartment project. Said land conditionally rezoned to Apartment House and Multiple Dwelling District by the Town Board on December 2, 1968 and subject to submission and acceptance of a subdivision map and site plan, (Acct. #5456 -300).

Mr. James Comparato appeared before the Board and submitted to the Board additional drawings showing this proposed project.

EXHIBIT E

He pointed out to the Board that the additional drawings did include the information requested by the Board following their last hearing on this matter.

No one wished to be heard on this matter and the matter was tabled by the Board pending further study.

The Clerk of the Board was directed to inform the applicant of this action.

ITEM # 2. The application of Stanndco Builders Inc. 40 Wildbriar Rd., Rochester, N.Y. for preliminary site plan approval for the proposed

EXHIBIT F

REPORT ON PROPOSED ZONING ACTIONS
REFERRED TO MONROE COUNTY PLANNING COUNCIL
PURSUANT TO SECTIONS 239-1 and 239-m OF THE
GENERAL MUNICIPAL LAW

Date June 24, 1971

ITEM NUMBER PN-47

REPORT TO: Planning Board
Town of Penfield
3100 Atlantic Avenue
Penfield, New York 14526

SUBJECT: Application of Jenkins-Wurzer-Starks to rezone Res. AA to PUD - Extending from Scribner Road East to Five Mile Line Road

RECOMMENDATIONS:

(a)_____ That the decision by the local agency having jurisdiction be based solely on its study of the facts of the case, since the County Planning Council's review of the matter has not revealed any pertinent inter-community or countywide considerations.

(b) X That the proposal be approved.

(c)_____ That the proposal be modified as follows:

(d)_____ That the proposal be disapproved.

EXHIBIT F

See attachment

/s/ Don B. Martin
Director of Planning
Monroe County Planning
Council

WEU/GRM/a
cc:DPW

EXHIBIT F

Town of Penfield
Zoning Referral #PN-47
June 24, 1971

It is the recommendation of the Monroe County Planning Council that the application of Jenkins-Wurzer-Starks, Architects and Planners, for a rezoning of the property extending from Scribner Road east to Five Mile Line Road and from a line approximately six hundred (600) feet north of Roberts Road in a northerly direction for a distance of about two hundred (200) feet, from residential "AA" to Planned Unit Development (P.U.D.) District, be granted based on the following reasons:

1. The proposal will take advantage of existing natural features on the site, and incorporate them into recreational areas for the residents.

2. The site is in close proximity to major commercial and personal services.

3. The site can be easily served by public sanitary sewers and water facilities, and will be served by two thoroughfares which are capable of handling the increase in traffic that will be generated by such a large development.

However, the Council feels there is a need for a positive commitment on the part of towns and developers to include in

EXHIBIT F

their designs the widest possible range of housing to accommodate all levels of income. Part of the concept of the P.U.D. is to provide various housing types and price levels within one development. Therefore, the Planning Council suggests that any approval on the part of the town should be based on a commitment from the developer or owner that a certain portion of his for-sale housing will be low to moderate income housing.

The Monroe County Planning Council has taken the position of supporting the development of such housing in the county based on the following reasons:

1. There is a critical shortage of housing for low and moderate income households in Monroe County that is seriously affecting the economic health of the entire county.

2. A combination of existing laws, attitudes, and market conditions are all working against the solution of this problem.

3. Those few sites that are developable for such housing are irreplaceable resources; and the site under consideration here is just such a site.

Further commitment should include the understanding that such housing units will not be concentrated and/or isolated from the rest of the development.

EXHIBIT F

It is further suggested that approximately twenty per cent (20%) of the sale units would be a fair assessment of the appropriate amount of such housing.

Finally, the Council urges the developer or owner to explore alternative ways available which would allow the same opportunity for integration of income levels in his rental units.

We should like to point out that all access drives and curb cuts with respect to Scribner and Five Mile Line Roads must be coordinated with and approved by the County Department of Public Works.

Furthermore, no building permits may be issued until provisions of Section 239-K of the General Municipal Law (County DPW review) are complied with.

EXHIBIT G

7-12-71

PENFIELD PLANNING BOARD
Page 10

ITEM #3. The application of Jenkins-Wurzer-Starks, Architects and Planners, 1545 East Ave., Rochester, N.Y. for a sketch plan approval of a proposed Planned Unit Development extending from Scribner Rd. east to Five Mile Line Rd. and from a line approximately 600 ft. north of Roberts Rd. in a northerly direction for a distance of about 2600 ft., such Planned Unit Development to be known as "Beacon Hills".
NOTE: PUBLIC HEARING CLOSED, MATTER UNDER CONSIDERATION BY THE BOARD.

Mr. Shaw, Chairman of the Board, explained that this item has been heard previously and the Board has studied the information submitted.

No one else wished to be heard on this matter and a motion was made by James Hartman and seconded by John D. Williams that the following resolution be adopted:

RESOLVED, that the application of Jenkins-Wurzer-Starks, Architects, and Planners, 1545 East Avenue, Rochester, N.Y. for a sketch plan approval of a proposed Planned Unit Development extending from Scribner Rd. east to Five Mile Line Rd. and from a line approximately 600 ft. north of Roberts Rd. in a northerly direction for a distance of about 2600 ft., such Planned Unit Development to be known as "Beacon Hills", hereby is

EXHIBIT G

RECOMMENDED, provided that:

1. The Town Board hold a Public Hearing for the consideration of the rezoning of this area to a Planned Unit Development District.

2. This recommendation is premised on the applicant reducing the density from that proposed.

VOTE OF THE BOARD

James Hartman, "AYE" John D. Williams, "AYE"
Willard Parker, "AYE George Shaw, "NAY"
Richard C. Ade, "AYE"

Upon the motion, 4 of the 5 members having voted "AYE", the resolution was declared adopted.

Mr. Shaw explained he had voted "NAY" on the grounds that the Planned Unit Development proposed was not consistent with good planning and the best overall use of the land in question.

ITEM #4. The application of James Comparato, 217 Lake Ave., Rochester, N.Y. for an interview with the Board in connection with the development of 9.73 acres of land immediately north of Pen-Fair Plaza at the corner of Webster Fairport Rd. and Penfield Rd. for an apartment project. Said land conditionally rezoned to Apartment House and Multiple Dwelling District

EXHIBIT H

B E A C O N

H I L L S

Builders & Developers

J.C. AUDINO, INC.

EXHIBIT H

Beacon Hills PUD*

B

What is a PUD?

E

A PUD is a planned community project
A having the following characteristics:

C a. Dwelling units grouped into clusters allowing an appreciable
O amount of land for open space.

N b. Higher densities allowed than conventional projects of the same acreage.

H c. Part of the land is used for non-residential purposes,
I i.e. - recreation, woods, picnicing, etc.

L

PUD's can, and do, work toward the
L creation of publicly owned lands. Since, in the usual development,
S each house requires a great deal of land, eventually the cost of land is driven up. The town may then find it economically impossible to buy land for large parks or for such increasingly important uses as wild-life preserves. If new schools must be built, land for them will also be costly, a fact which sooner or later will show in the already painful tax rate.

* Planned Unit Development

EXHIBIT H

ADVANTAGES OF A PUD

- The PUD's clustered houses create common areas of open land that can run through the entire project, instead of being concentrated in one massive and costly park.

- The PUD requires a well organized, soundly financed developer, and so discourages the fly-by-night developer - a decided advantage to both the Town and residents of the PUD itself.

- The PUD's higher densities reduce land and land development costs per unit, which in turn may lower prices and rents. Property planned clusters reduce street and utility runs and the amount of grading necessary for house sites - all of which reduce costs. Higher densities also mean less land consumed for a given number of housing units, thus reducing inflationary pressure on the Town's land prices.

- The PUD can bring in tax revenues in excess of the amount of services it requires. Revenues are higher because there are more units. Costs of services are lower because the PUD almost always has a much lower proportion of school children than do single family houses. Road maintenance cost is less because

of the high density of population to the amount of roads required.

LOCATION

Beacon Hills is located in Penfield, where you are in close proximity to the advantages of the big city, yet in the loveliest of suburban communities.

The New England tradition was planned for Beacon Hills primarily to benefit the entire community from an aesthetic standpoint. For in Penfield, the primary aim of the residents is to preserve and protect the glorious beauty that nature and nature's God bestowed upon them.

ARCHITECTS - JENKINS • WURZER • STARKS

The firm of Jenkins•Wurzer•Starks, Architects and Planners, was formed in 1969 by the merger of the practices of two Rochester firms and a corporate architect. It is a natural outgrowth of the broad experience of the three partners. The nucleus of the firm was formed in 1961 when Myron Starks entered private practice.

Drawn together among the partners, associates, staff architects and draftsmen are more than one hundred years of experience in the architectural profession.

The firm believes that architecture is a process for beautifying and improving the environment; and that the design of buildings must

harmonize with and enhance the natural surroundings, rather than interfere with them.

ENGINEERS - DENLUCK, THOMAS, MCGRAIL & ASSOCIATES

The firm of Denluck, Thomas, McGrail & Associates, Surveyors and Engineers, is the successor to a firm which established roots in the Rochester area in 1880. It provides a full range of professional services in the fields of Land Surveying, Engineering, Land Planning and Development.

The engineering division has been broadened to provide a complete spectrum of civil engineering service. This service entails design and field supervision of the construction of sewage facilities, storm water disposal, water supply systems, land development and other related projects that may be required by an individual or municipality.

BUILDERS & DEVELOPERS - J.C. AUDINO, INC.

J.C. Audino - President
Ronald J. Iman - Vice President

Joe Audino is one of the few genuinely dedicated men in this world of high pressure and finance, an astute businessman, but a

EXHIBIT H

businessman tempered by time and experiences that serve to instill an inward evaluation and acceptance of those things that are of true value in life.

An active man, Joe is part of the panorama that is Penfield, he does not believe in joining organizations for appearance sake and limits his affiliations to those organizations where he feels he can actively contribute ... as a member of the Rochester Home Builders Association he serves on the Board of Directors, in the St. Joseph's Church, he assisted in the design and construction of a school addition and the Convent. He has contributed in no small measure as a member of the Penfield Republican Club, Lakeshore Kiwanis, Rochester Chamber of Commerce, Penfield Country Club and the Businessmens Association. He recently headed the Design & Planning Commission for new addition to Penfield Senior High School.

J.C. Audino Company presents an impressive list of construction accomplishments.

- 2,500 homes in Webster, Irondequoit Rochester and Penfield
- Portland Manor Apartments
- Culver Manor Apartments
- Addition to St. Joseph School and Convent

EXHIBIT H

- Terrace Gardens Bowling Hall
- Flamingo Motel - in Florida
- Club House - Penfield Country Club

Joe Audino is proud of his profession, and his profession can well be proud of Joe Audino, he is in the mainstream of our life, contributing to and for the causes he believes in ... "To provide a better environment for a better community for the benefit of all."

EXHIBIT H

Presenting --- a few of the many plans for Beacon Hills

S I N G L E F A M I L Y H O M E S

RANCHES, SPLITS AND COLONIALS

Each Beacon Hills home is thoughtfully planned and efficiently designed. A variety of elevations and floor plans are available. Ranches, splits and colonials fulfill the needs and desires for any and all age groups from the young executive with a growing family to the retiree looking for the fresh air and sunshine of country living.

All Beacon Hills homes are designed in keeping with the overall New England motif of the Community. Every home is constructed using the highest standards of the construction industry. There is no waste space in any home. There is more closet space, more storage space --- and more living space --- in every Beacon Hills home.

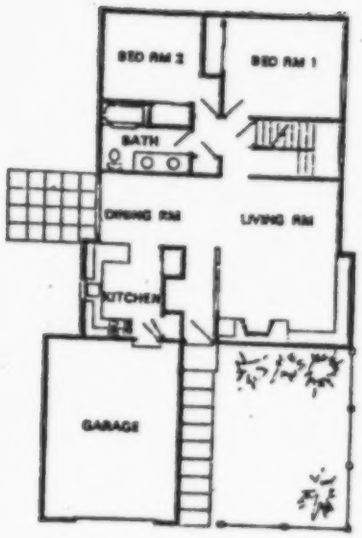
The following features are included in the Beacon Hills homes.

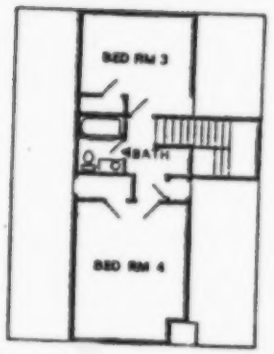
Seeded Lawn
One and 2-Car Garages
Storms and Screens
Take-Out Windows (Casements Optional)
Patio Door
30 inch Free-Standing Range
Dishwasher-Disposal
Master Bedroom Bath Optional in Some Models
Ceramic Tile Baths
Paneled Family Room Optional
Fireplace Optional
Self-Seal Roofs
40-Gallon Glass-lined Hot Water Heater
Fiber Glass Insulation

EXHIBIT H

Armstrong Tile and Linoleum

Many other quality features





THE WOODS HOLE

2 BEDROOM CAPECOD
can expand to 3 or 4 bedroom as your family grows.

EXHIBIT H

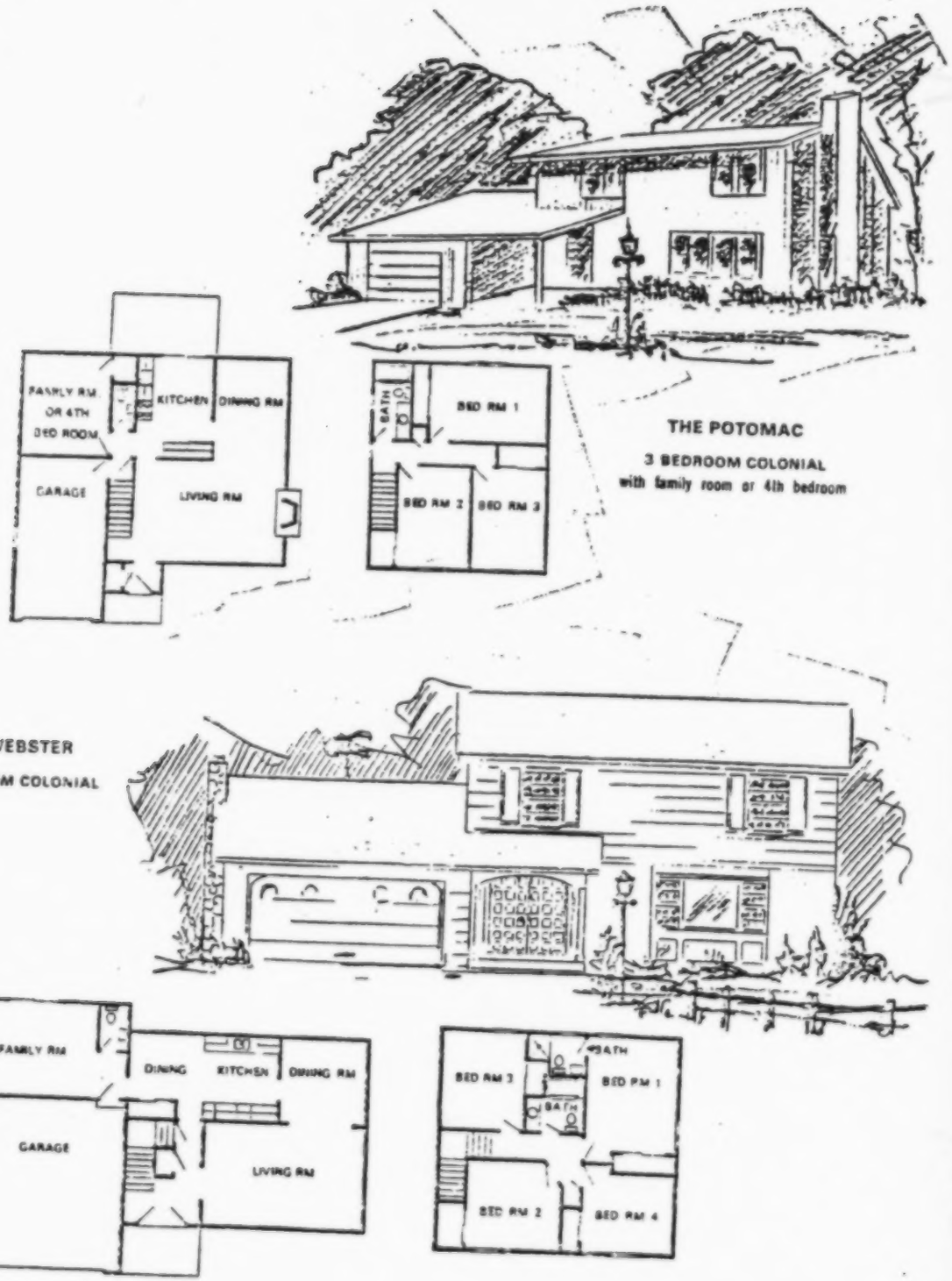


EXHIBIT H

BEACON HILLS

PLANNED UNIT DEVELOPMENT

Beacon Hills is a community that has been planned for the very best in suburban living. A plan to take full advantage of all the things you move to the suburbs to seek. It is a community planning concept which is certain to set a new standard for suburban residential communities. In Beacon Hills, are streets that have been planned for a residential community, where the automobile will no longer be a threat to your children crossing the street to play, or walking and running on their way to school. Strolling, for children and adults alike, will become a pleasure. In Beacon Hills you will live in an atmosphere that is conducive to a highly rewarding new way of life. Where you will share mutual interests with interesting neighbors.

RECREATIONAL FACILITIES

Recreation close to home, as part of the daily way of life, is an essential ingredient in today's community. Wurzer, Jenkins, and Starks, in developing Beacon Hills have provided recreational facilities for all tastes. Plans call for the construction of a community, year-round swimming pool with apprcpriate supporting facilities and related deck and terrace areas, tennis courts, recreational building and

shelters and well equiped play areas for the young. Proper supervision will be maintained for all facilities.

Beacon Hills

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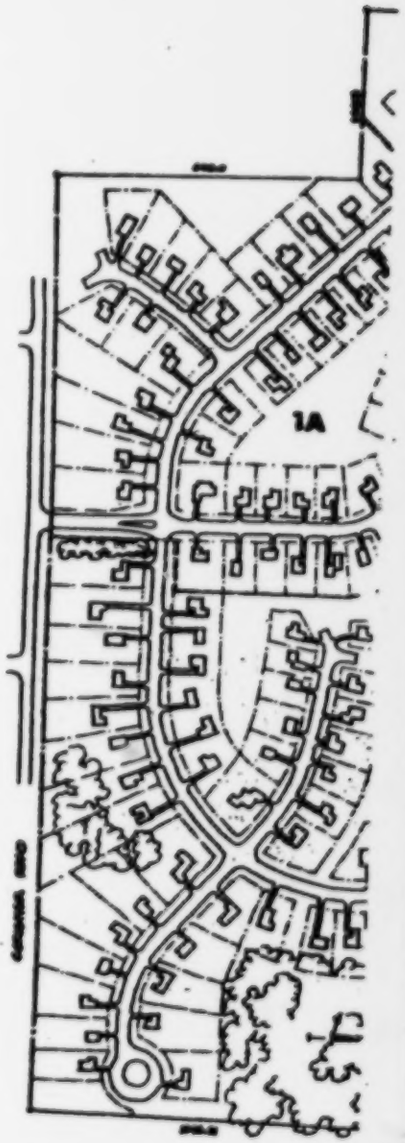

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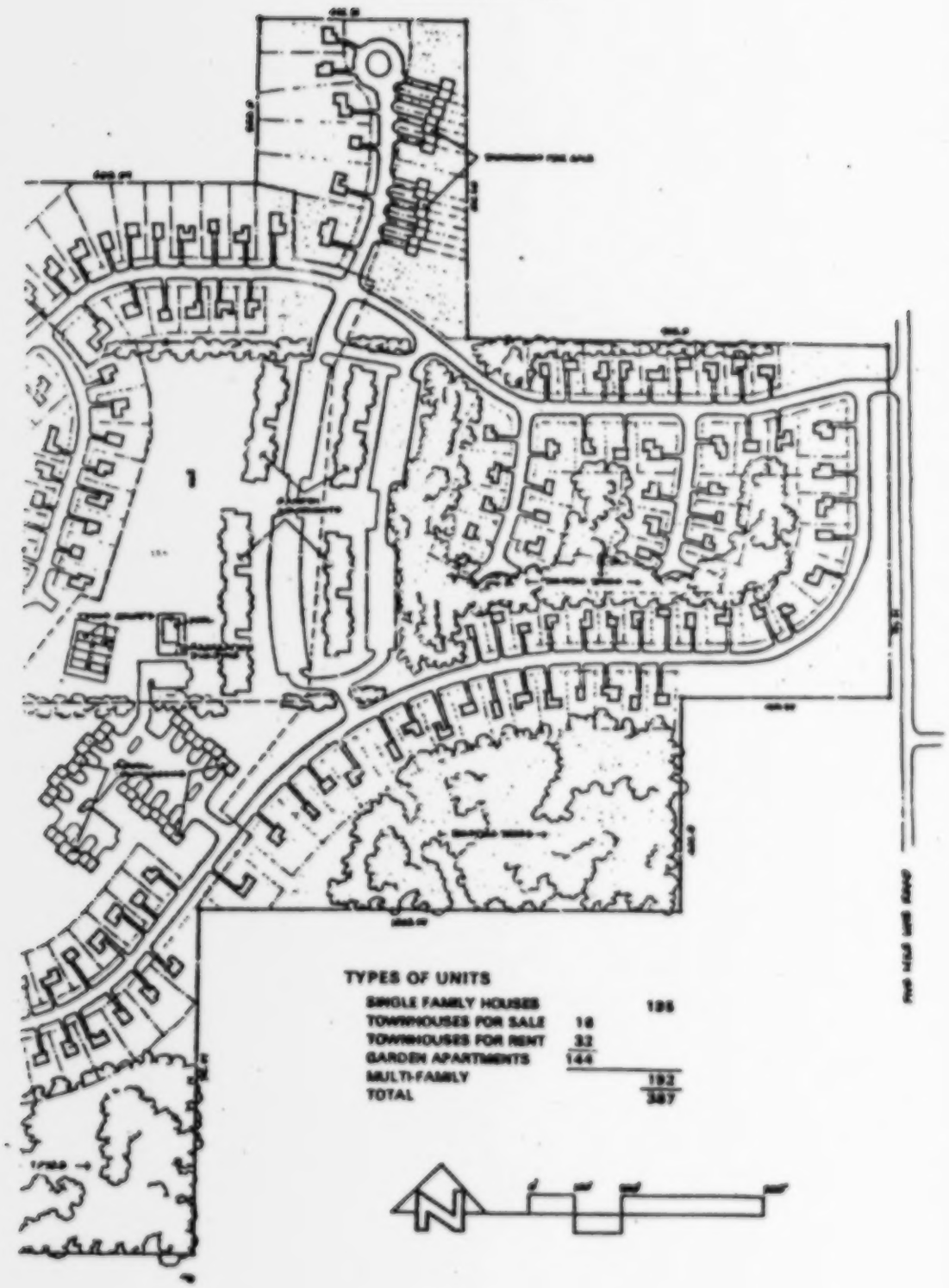
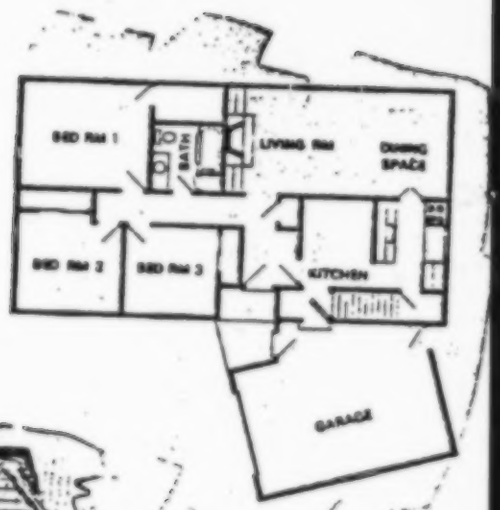


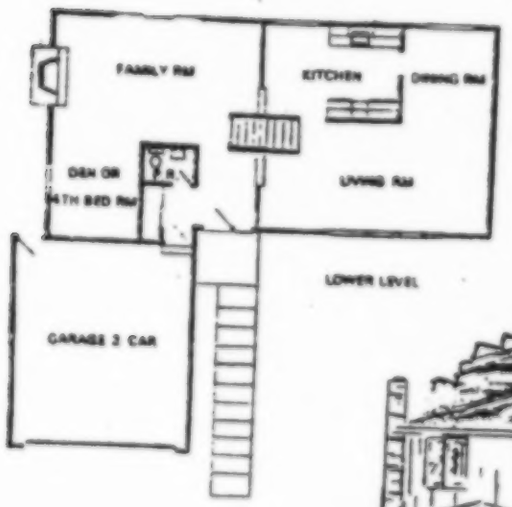
TYPES OF UNITS

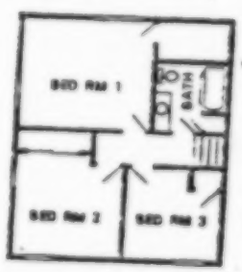
SINGLE FAMILY HOUSES		195
TOWNHOUSES FOR SALE	16	
TOWNHOUSES FOR RENT	32	
GARDEN APARTMENTS	144	
MULTI-FAMILY		192
TOTAL		387

THE MONTCLAIR

3 BEDROOM RANCH



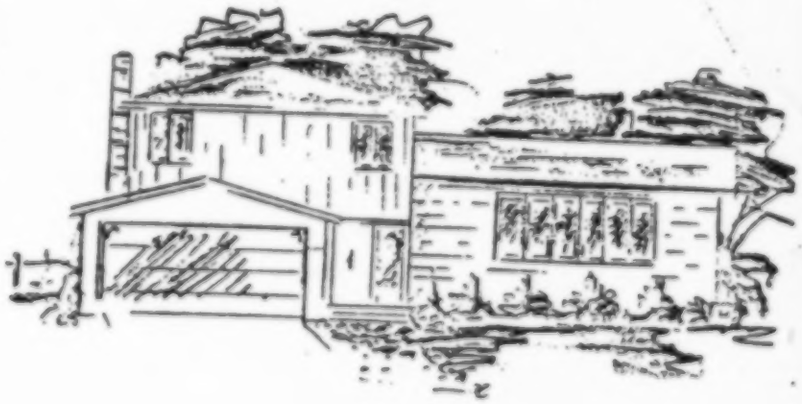


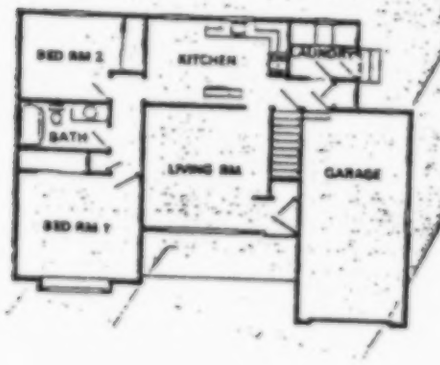


THE GREGG

3 BEDROOM SPLIT

with den or 4th bedroom

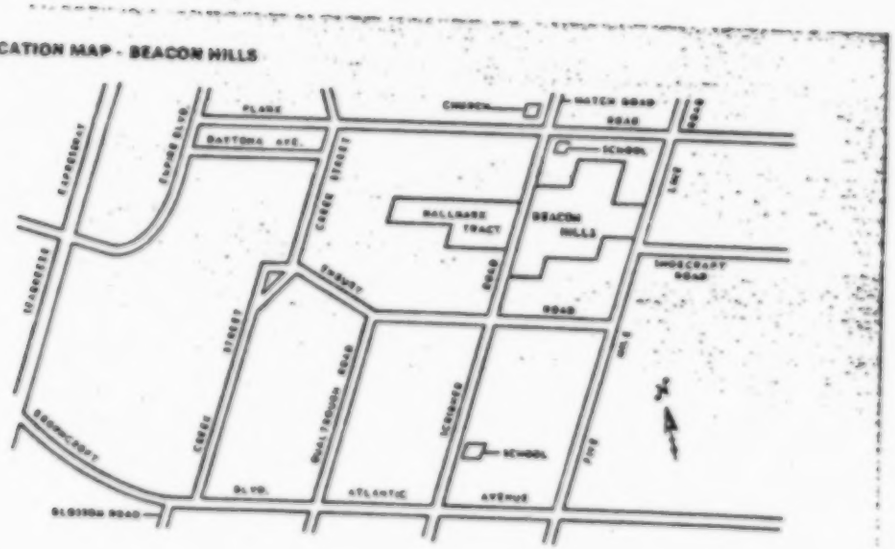




THE RANCHERO

2 BEDROOM RANCH

LOCATION MAP - BEACON HILLS



GARDEN APARTMENTS

GARDEN APARTMENTS

In keeping with the theme of Beacon Hills, which is to enhance the natural setting with a New England motif, both the Garden Apartments and Townhouses have been designed with varying combinations of materials to respect and improve the natural wooded landscape. Both the Townhouses and Garden Apartments have been situated to form expansive, landscaped courts, providing quiet elegance in a Country Club setting. The elegance and convenience which are generated by their role in the PUD offers a very important financial contribution to the town. Suburban communities, particularly those with a superior school system, invariably attract families with school-age children to take advantage of the schools. When the children are grown, however, their parents are no longer concerned with the schools. They no longer wish to maintain a large home, and finding no suitable apartments or townhouses available, move away. With them, goes a low demand for services and a higher than average purchasing power. This purchasing power would have benefitted the merchants, and the tax base of the town.

TOWNHOUSES

TOWNHOUSES

The PUD, with its Garden Apartments and Townhouses, offers both the young family and the older, more mature family a viable alternative to the single-family, detached house. The PUD, being a planned community, offers a life-time place to live. The young, newly married couple utilizes the apartment. As the family grows, a home is available for them in the PUD. Then, after the children are grown and married, the older couple can make use of the Townhouses. Thus, through the PUD, the town gains both money and a more varied, hence stable, population.

At Beacon Hills, the Garden Apartments and the Townhouses are located near the center of the PUD, in close proximity to the recreational areas. There, with their New England traditional motif, they form an attractive setting for the leisurely tempo of living which the community is designed to maintain, through its lifetime program of convenience and relaxation.

EXHIBIT H

IN SUMMARY

Most residents, when they hear the word "development," immediately draw associations - most of them bad. They visualize their hills being bulldozed into a vast area of streets, sidewalks, tiny back yards and identical houses spread out in an endless checkerboard of repetitive blocks. They foresee a flood of children to overburden the school system and thereby esculate their property taxes.

They moved to the suburbs to escape just such conditions as these. So when hearings are held on the new project they'll be there --- fighting.

Of course, most of these objections have already been eliminated previously, in the preceeding pages of this booklet, but a few more facts are necessary.

Land is a major key to housing development - economically as well as physically. If a builder is forced to include more land with each house, he must raise prices. Since it is economically not feasible to build a $20,000 house on a $20,000 lot, he must therefore build in much higher price brackets. Thus, families of modest means - particularly younger families - find it harder and harder to live in the community.

Older couples and individuals who no longer have a need for big houses find nothing to choose from in smaller units. They may then move away, taking with them higher than average incomes, much of which would

EXHIBIT H

be spent in the town, and tax payments which would not be counter balanced by demands on local school and recreational facilities.

We all feel that this site is ideal for a planned unit development. Its hills and trees, which will not be disturbed, beautifully lend themselves to the rustic atmosphere which will prevail in the development. The recreational opportunities afforded by this location are many and varied and some have already been planned into the development.

We feel that anyone is entitled to live here. This type of plan is non-discriminatory in that the young buyer, the older buyer and the moderate income buyer will all be able to avail themselves of this opportunity.

The plan itself, is well designed for the area, in that the designs and values of homes will be in keeping with the surrounding area; for it is the desire and intent of the builders and developers to create one of Penfield's finer communities.

We hope that someday you will live here.

J.C. Audino, Inc.

800
EXHIBIT I

Penfield PUD Law Hits Snag on Density

The Penfield Town Board last night called a hearing for Aug. 17 to revise the town ordinance for planned unit developments (PUD) by decreasing the allowable density.

The present PUD ordinance allows an average of 5.2 units per acre; the hearing will be held to lower that to four units per acre and to stipulate that half of the units must be single family residences.

The present ordinance stipulates the number of acres, rather than the number of units, that must be single family residential.

"In some of these PUD's coming before the board, we're getting as many as 70 to 80 per cent apartment units. We never intended that percentage to be so high," said Supervisor Howard J. Frank. "We didn't notice this in the ordinance until developers started presenting their plans."

The town board also will hold final hearings on Aug. 17 on:

The proposed Beacon Hill PUD, which would be located between Scribner and Five Mile Line Roads, north of Roberts Road. The 97-acre PUD, proposed by developer Joseph C. Andino, received favorable recommendations from the County Planning Council and (with stipulations) the town planning board.

The 38-acre $2.5 million shopping center proposed for the southeast corner of Plank and Five Mile Line roads. It would include 20 stores and a service station. Although it has been strongly opposed by several area residents, the center has received favorable recommendations from the county and (with stipulations) town boards. The proposal was made by Mrs. Ernest Loodadio.

The town board last night reserved decision on a proposed 188-acre PUD called Rock Lake east of Five Mile Line Road, north of Whalen Road and west of Baird Road on land owned by Dolomite Products Co., Inc. The 731-unit PUD received favorable recommendations from the county and (with stipulations) town boards.

The board issued special permits to a 150-acre, 18-hole golf course, par three course and driving range at Whalen and Webster-Fairport Nine Mile Point Roads. The public courses were proposed by Jamie Stanton.

The board also issued permits for a "private proprietary home for adults" on a five-acre site off of Five Mile Line Road and adjacent to Penfield High School. The 60-bed home was proposed by George E. Coy, 233 Brush Hollow Road, the proprietor for a similar home for the aged in Greece.

Permits also were issued for the reopening of a Gulf service station at Atlantic Ave. and Creek Street and for a car wash and gas station on Fairport-Webster Nine Mile Point Road, near Penfield Road.

The board also lowered the speed limits on Panorama Trail, between Dogwood and Atlantic Avenue, from 35 to 25 miles per hour and on Hermance Road from 40 to 25 miles per hour.

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EXHIBIT I

Penfield Zoning, PUD Changes May Meet Opposition Tonight

By BOB BECK

A lengthy meeting is expected tonight when the Penfield Town Board holds public hearings on two controversial rezoning requests and a proposed revision of the town's recently enacted Planned Unit Development (PUD) ordinance.

Town Supervisor Howard Frank said yesterday he expects between 200-300 persons at the hearings at 8 tonight in the Town Hall.

The most controversial hearing is expected to be a request to rezone 97 acres from residential to PUD for the Beacon Hills PUD. A petition with over 600 signatures opposing the project was presented to the town planning board six weeks ago.

Frank said the planning board favored the project, with the condition of reduced density.

The project, between Scribner and Five Mile Line roads north of Roberts Road, would consist of 180 single family residences, 92 duplex units, 90 townhouses, and 192 garden apartments. The proposed density is 4.5 units per acre.

Frank said the proposed revision in the PUD ordinance could dampen resident opposition, because it calls for a density of four units per acre and requires 50 per cent of the dwellings to be single family detached homes.

Beacon Hills is being developed by Joseph Andino and was designed by Jenkins-Wurzer-Starks, architects.

Frank said he thought much of the opposition to Beacon Hills is caused because of a misunderstanding of the town's zoning ordinances.

"All farm land is zoned residential," he said. "The town board's policy has been to leave it as such until someone presents a specific project for a piece of land and asks to have the land rezoned."

Two other PUDs under consideration by the board have not drawn much resident opposition, Frank said.

Mrs. Anne McNabb, co-chairman of the Metro Act Housing Task Force and a member Penfield Action for a Creative Tomorrow (PACT), said yesterday that both groups would be represented at the hearings to discuss the proposed PUD ordinance changes.

"There is concern that decreasing the density would decrease the flexibility of the PUD," she said. The concept of PUD is to obtain a mixture of low, middle and upper income housing.

"Fewer units will increase development costs," she added.

Louis Chiles, a spokesman for the architect firm, said that several changes had been made to the Beacon Hills project since public hearings began on it in January. These include withdrawing of a small grocery store, moving townhouses from the view of local residents' homes, and redesigning of the PUD to leave two large stands of trees undisturbed on the project site.

Chiles said all of the changes had been made in response to criticism from local residents.

The remaining hearing is for a "neighborhood" shopping center at Plank and Five Mile Line roads, about one-half mile from Beacon Hills. The 38-acre center is being proposed by Ernest Laudadio, and designed by the Jenkins firm.

All other public hearings, some residents have claimed the $2.5-million center is not needed.

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PUD: Expense, Risk May Be Too Great

(Here's part 2 of two-part series on planned unit development (PUD) — what they are, their future and their problems.)

By MICHAEL BURKE

PUDs "may look nice, sound nice, and be nice," but many developers still will ignore them.

That's the opinion of Allen H. Temple, developer for Harrison Homes.

Few will argue with the concept of PUDs, says Temple, in theory, and on paper, they do catch the attitude in subdividing — property which should be developed in other ways.

"PUDs mean dropping all zoning restrictions a town has set up to protect itself," says David E. Jordan, Perinton councilman.

Developers say that to build a PUD and be creative in land use they can't be restricted by detailed or "built" zoning laws, Jordan said. "But that's just like saying 'go ahead and do what you want' to some builder and I don't think (this) is what can be explained.

"We can have good PUDs and still keep the current zoning laws on the books. With detailed zoning requirements matter is that not many developers are going to build them, because most aren't capable of building on this large a scale."

A "true" PUD (totally designed community with 100 to 1,000 acres) is the ideal of the planners, but it is not widely known or accepted. Sure... go ahead, try it in our immediate area, (an area zoned class "AA" residential), and if it proves to be a failure -- WHO SUFFERS ???.....

"true" — both single family homes and apartments.

The term PUD seems to have suffered from many loose interpretations.

"If you look around all you hear about is some new PUD going up," another developer said. "But the truth is that builders, like everyone else, have jumped on the terminology bandwagon and are calling every new family apartment or townhouse complex a PUD."

"Unless it contains single family homes it's not a true PUD," he said.

Some town board members and residents also have misconceptions about PUDs, says Webster Town Attorney Donald J. Siemers.

"Unless they realize what PUD really is and how it can benefit the community, many homeowners will think the concept involves more restrictions."

"That you might say a lack of restrictions on the builder's part has made it difficult for PUD to become widely known or accepted, he said.

To solve PUD's problems, Siemers believes it will take enlightened town boards who will work closely with professional planners.

"We can make the suburbs a bit more enjoyable and livable for a lot more people if we can solve the problems involved with PUD."

" PUD " -- a concept
yet not widely known
or accepted. Sure...
go ahead, try it in
our immediate area,
(an area zoned class
" AA " residential),
and if it proves to
be a failure -- WHO
SUFFERS ???.....

A "true" PUD (totally designed
community with 100 to 1,000
acres).....May we offer
an alternative ? Why not
construct a "true" PUD in an
appropriate area (one not zoned
"AA" or built around it with
class "AA" homes already).....
Allow individuals to move into
the PUD and build around the
PUD, by choice ?????

Trouble on Horizon for PUD Zoning?

Rochester Democrat and Chronicle, Sunday, Sept. 19, 1971

By MARK STRAUB

The concept of planned unit development (PUD) has no dedicated enemies in Monroe County.

It is widely and warmly embraced throughout the suburbs as the concept that will guide future land use in Monroe County.

Town leaders will tell you that the "flexibility" permitted the developer under PUD allows him to "redeem costs" and make available "housing for all economic levels."

But now, a little more than a year after the planned unit development concept emerged in Monroe County, the unanimous support it had in its conceptual stages is breaking down.

Planned unit development have passed various stages of town approval in Henrietta, Webster and Pittsford, and several other towns have adopted or are in the process of adopting planned unit development laws.

But Pittsford, which was the first community to adopt a planned unit development law, in May 1969, may be signaling an early retreat from flexible planned unit development.

Most simply, planned unit development is the grouping of all varieties of housing — single family, duplexes, town houses and apartments — in a single development. Larger projects, like the 1,500-acre Riverton project proposed for Henrietta and Wheatland, will incorporate industrial, commercial and recreational development.

Ideologically, planned unit development has emerged as one solution to economic, social and ecological ills.

Because of the high cost of land and construction, the suburban "dream house" is less and less affordable. By clustering housing, the developer can reduce his costs and rent or sell his properties at relatively low prices.

Thus to many human relations groups, planned unit development has become the most harmonious and economically feasible way to bring low-income groups into the wealthier suburbs or, as they said in the '60s, integrate the suburbs.

Pittsford probably will reduce in the next few weeks the maximum density permitted in planned unit developments from 6 units to 4 units per acre while requiring that half the units be single family detached dwellings.

Pittsford Supervisor Howard J. Frank said the planned unit developments being proposed in Pittsford are often 80 per cent apartments and don't coincide with the town board's conception of the proper housing mixture.

But getting closer to the suburban dilemma, Frank admitted, "You've got problems when you have apartments and you're putting them in residential AA areas next to $40,000 homes."

If Pittsford is signaling a retreat, it is in the face of pressure from the homeowners (in an election year).

While the professionals and civic leaders like architect Lewis Childs Jr. see planned unit development as "an alternative to the problem of suburban sprawl, the widespread lack of recreation and the aesthetic butchery of some suburban housing tracts, the suburban resident is beginning to view it as a glorified apartment project.

To the more rational, this means more children, more traffic and more taxes. But often more important, planned unit development is a change in the type of suburbs that the residents chose to live in when they bought their homes five to 10 years before.

And finally, the irrational fear of change in the form of integration of some of Rochester's white suburbs plagues planned unit development as it has and will any innovative housing program for the suburbs that deviates from the single-family norm.

At an Aug. 16 public hearing on amending Pittsford's planned unit development law, the Pittsford Town Board heard residents warn that "where you have high density, you have a slum" and "they will have two, three and four children for every bedroom."

The net effect of reducing the maximum density of Pittsford planned unit developments and requiring that half the units be single-family homes will be to raise building costs and make it more difficult for lower income groups to afford the move into the suburbs. This runs counter to the rhetoric sounded by town officials when they first considered planned unit development.

Anthony Calderone, secretary of Stanndco Developers Inc., warned that the effect of the amended law would be to create developments that "look more cluttered at a lower density."

Calderone said the effect of the amended law on a 110-acre Stanndco project that has already received preliminary approval in Pittsford would be to reduce the number of units from 518 to 414 while increasing the number of buildings from 140 to 230.

The amended law would engender elimination from the project of a mid-rise building for the elderly while raising rents between $5 and $15 a month in rental units and the sale price of homes between $500 and $1,200, he said.

Finally, for the citizens worried about taxes, the amended law will create Stanndco to develop a project that will yield an more school children than the original while producing $126 less in tax revenue per child, Calderone said.

The Monroe County Housing Council, in a prepared statement, fiercely attacked the proposed Pittsford ammendment, calling it "foolhardy to impose even more stringent regulations upon the one mode of development that has

Continued on Page 12B

Planned Unit Development concept faces erosion, despite lip service

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EXHIBIT I

IF THIS IS OUR "NEW TAG" — WILL OUR TOWNSHIP BEGIN TO GO DOWNHILL AS OTHERS HAVE IN THE PAST?

WILL OUR PROPERTIES LOSE THEIR VALUE BECAUSE OF THIS? → HOMES UNDER $25,000 IN THIS DAY AND AGE?

WILL THIS CONCEPT BRING "TRANSIENT PEOPLE" TO OUR COMMUNITY? → APARTMENTS..... CONDOMINIUMS; HOW LONG WILL THEY BE MAINTAINED AND AT WHAT LEVEL OF STANDARDS?

PLEASE PLAN TO ATTEND THIS "PUBLIC HEARING" AND PROTECT YOUR INVESTMENTS.

ROCHESTER, N. Y., TUESDAY, MARCH 31, 1970

Penfield's Aim: Lower Home-Tag

By DAN VAN ATTA

Penfield's Town Board is working on a new ordinance which it hopes will convince tepid builders to develop "moderate income housing" in the town, Supervisor Howard J. Frank said last night.

Called Planned Unit Development, Frank said the local law will "allow developers to take the gravy on their apartments, but also build houses to sell for under $25,000—that's the theory."

Despite a similar provision that was approved as part of the new Webster zoning ordinance last June, Frank said he believes the Penfield plan may be the first of its kind to be adopted in New York State.

"It will allow a developer to cluster a variety of structures —apartments, condominiums, and single family dwellings— without having to go to the town for approval for all the different zonings."

Frank said the proposed ordinance will make the following demands of developers going into Planned Unit Development:

- Each site must be at least 100 acres in size.
- "Financial liabilities and individual contracts" must be adhered to, providing that the moderate income housing keep pace with other aspects of the development.
- "At least 20 per cent of the development be devoted to park land."
- At least 30 per cent of the development be in single family dwellings.
- Higher income structures be constructed around the exterior of the development to maintain the valuation of nearby properties.

"We're trying to achieve low or moderate income housing, which seems to be in great demand, without many subsidies," Frank said.

"I think private enterprise is still the best means—the developers can do the job if they want to."

Frank said there are "two or three Penfield developers" who have expressed interest in building such a development in the town, but he would not say who they are at this time.

The town attorney presently is drawing up the ordinance, and the "public hearing will be in late April or early May."

In addition, a Syracuse architect will sketch what the development might look like, at "a random site in town" for a fee of from $1,000 to $1,500.

WHO ?

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EXHIBIT I

THE ATTACHED PAGES ARE FOR YOU ----------

****

NORTHWEST PENFIELD HOMEOWNERS

****

They will affect you next Monday nite, May 10, 1971.

Robert Road	Embury Road	Witherspoon Lane
Five Mile Line Road	Shoecraft Road	Havenshire Road
Scribner Road	Stockton Lane	Longsworth Drive
Old Barn Circle	Hitchcock Lane	Belvista Drive
Timberline Drive	Rodney Lane	Browncroft Blvd
Bella Drive	Alberta Drive	Cityview
Plank Road		

REMEMBER THE DATE

1. Are you concerned about your personal property values ?

2. What about your immediate community and neighborhood ?

3. Why did you move into the house you presently call your HOME ?

   a. Was it because of the area ?
   b. Did the type of housing appeal to you ?

EXHIBIT I

c. Do you like the wide open spaces ?
d. Do you work hard to maintain your home ?
(Certainly, we all do)
e. You apparently enjoy suburban living, you're proud of your home and family.

******** 4. Would you object to or might you have second thoughts about approximately 500 families crowding into approximately 100 acres of land to be located in your immediate area ?

******** 5. Do you want APARTMENTS and TOWNE HOUSES to be constructed in your immediate class "AA" zoned residential community ?

Well.....its being proposed next Monday nite, May 10, 1971

TIME: 8:00 p.m.
PLACE: Penfield Town Hall Auditorium
LOCATION: Atlantic Avenue

YOU are urged to attend this public hearing .... Get the facts first hand; not by rumor, heresay or misrepresentation.....

PLEASE READ ON .....

EXHIBIT I

******* B E W A R E ! ! ! ! *******

P E N F I E L D AND W E B S T E R

HOMEOWNERS.....

The attached page is a copy of an article which appeared in the Tuesday March 31st Democrat and Chronicle .....
It effects you ---- and could result in low cost housing for the Webster/Penfield area.....APARTMENTS --------
CONDOMINIUMS ------- TENEMENTS -------
Property valued under $25,000.00 in this day and age??????????????????????

WOULD YOU SUFFER A PERSONAL LOSS?????

Please read the attached article and plan to attend the public hearing scheduled to be held later this month ..... Please check your local papers for the exact

date, or call your township requesting information relative to this re-zoning.... PROTECT YOUR HOME AND PROPERTY INVESTMENTS !!!!!! Thank you .....

Plan on participating before it's too late.....

Will the standards of our fine community be lowered if we allow low cost housing to be built?

Look around at other communities and see what low cost housing has accomplished ???????????

SINCERELY,

A CONCERNED GROUP OF PENFIELD AND WEBSTER HOMEOWNERS

NORTHWEST PENFIELD HOMEOWNERS ASSOCIATION NEWSLETTER # 9

IF..... you live anywhere in Penfield, this Newsletter message is for you.
..... you have open land anywhere around your present place of residence, please read the following statement carefully.
..... you're concerned about commercial development and the placement of 4 lane highways near your home, please read on.

For approximately three (3) years we have begged and pleaded with the present Penfield Republican Town officials to preserve and develop our area in an orderly fashion. We have been ignored, frustrated and publicly humiliated at recent Town Board meetings. We are being governed by a handful of elected individuals (the present Penfield Town officials) who because of their positio and authority have chosen to ignore the majority (see number 2 below) WHY? Our questions and defenses go unanswered.....So much CONTROVERSY; so much CONFUSION.....
OUR HOMEOWNERS ASSOCIATION has never been nor are we presently politically affiliated.....

We now have the opportunity to be heard and we ask all of you to help us - HELP YOURSELVES IF YOU CARE and want a fresh and needed change in Penfield Town government. We have receive the following statement from the Democratic party who have requested the opportunity to serv our town..... Why don't we give them a chance?....."

The APARTMENT and TOWNE HOUSE PUD application.....

The SHOPPING CENTER How long before it will come up again? When will it pass? What WILL follow?

Where will the 4 lane highways begin and end?

This could happen in YOUR AREA..... None of us are protected under the present zoning ordinances.....

MORE COMMERCIAL and 4 lane highways....

UPDATE the Master Plan.. it is 10 yrs behind the times...

TAX ASSESSMENTS....
SCHOOL BUDGETS.....
POLICE PROTECTION..
YOUTH PROGRAMS.....
RECREATION AREAS...

Why are we waiting; why can't we start solving some of these PROBLEMS?

STATEMENT by the Democratic Candidates for Penfield Town Offices

We, the Democratic Candidates for Penfield Town Offices, support the residents in the ar of the Beacon Hills subdivision in their opposition to this so-called PUD.....
We support the residents in their opposition to the proposed shopping center at the corner of Five Mile Line and Plank Roads.....
We support the residents in their opposition to the widening to four lanes of Five Mile Line Road, Plank Road and Creek Street.....
The REASONS for this position are as follows:

1. The Beacon Hills project is in an area zoned AA and in which there is already extensive AA development. The question of how this project will affect the investment homeowners now have in their homes HAS NOT BEEN ANSWERED.
2. Neither the Town nor the developer have dealt with the residents in a fair and equitable fashion A PETITION OPPOSING THE PROJECT, bearing the names of 818 residents representing 90% of those affected was IGNORED BY TOWN OFFICIALS. The builder offered a compromise which would permit the building of AA, A, and B zone lots. The residents were willing to consider the offer but the developer withdrew it before it could be acted upon.
3. The procedures used in the Public Hearing when the rezoning was considered are in question. Due to the crowded agenda, the hearing did not begin until 12:30 a.m, August 18, 1971 whereas the hearing was called for August 17, 1971. While this may appear a trivial point, the fact is that many residents had to leave the hearing and all who remained were weary. It was not the appropriate time for a hearing.
4. The site of the PROPOSED SHOPPING CENTER at Five Mile Line and Plank Roads is within one mile of Route 250 and Plank Road which already has the beginnings of Commercial development. There is no current community need for a shopping center at this site.
5. Because of the RESIDENTIAL NATURE OF THE AREA, 4 lane highways are NOT NECESSARY and, indeed may be a HAZARD. No existing traffic problems will be solved by having a four lane highway. In fact, such improvements will probably create traffic.

The policy of the incumbent administration to zone everything AA and then spot rezone as developers present plans for APARTMENTS, COMMERCIAL developments and the like IS NOT PLANNED PROGRESS, provides NO PROTECTION FOR THE RESIDENTS and leads to unnecessary CONFUSION and CONCERN. This policy must be abandoned. The Master Plan must be UPDATED so that the Town of Penfield can be well planned and we can provide a good balance between housing, commercial developments and recreation areas in order that Penfield can remain a pleasant place to live. After all, living is the business of Penfield.

SIGNED..... Irene Gossin, Supervisor Candidate
Frank Fallieberck, Council Candidate
Don Hare, Council Candidate
Lin Embrey, Council Candidate
John Burns, Town Clerk Candidate

..... We're asking all of you as Penfield homeowners and voters .....
..... PLEASE VOTE ROW B --- ALL THE WAY --- on ELECTION DAY, next Tuesday November 2nd GIVE THEM THE OPPORTUNITY TO SERVE US.....

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EXHIBIT I

A COMPLETE LIST OF NWPHA AREA REPRESENTATIVES ACCOMPANIED WITH THEIR RESPECTIVE TELEPHONE NUMBERS IS FURNISHED FOR YOUR INFORMATION:

Bill Buchholz, Jr. (Shoecraft Road Area)..... 671 - 1868

Carl Cooman Jr. (Five Mile Line Road Area). 671 - 1907

Joe DePaolis (Independence Ridge area).... 671 - 5724

Harry Esposito (Old Barn Circle - Timberline Area)671 - 4975

Jim Ewing (Robert Road Area)... 671 - 5286

Sal Fico (Independence Ridge Area)..... 671 - 5737

Joe Frate (Independence Ridge Area)..... 671 - 7482

Bill Lippa (Independence Ridge Area)..... 671 - 4354

Paul Mandina (Five Mile Line Road Area)..... 671 - 4260

Charley Roth (Scribner Road Area)..... 671 - 4217

Dorothy Sullivan (Robert Road Area)..... 671 - 3385

Jack VanVeen (Embury Road Area)..... 671 - 6360

EXHIBIT I

Bob Vincent (Embury Road Area).. 671 - 4172

Bruce Wells (Robert Road Area).. 671 - 3585

Walt White (Old Barn Circle - Timberline Area).... 671 - 3082

John Wojciechowski (Old Barn Circle - Timberline Area).....671 - 7594

***** The above listing is current as of this date and represents total coverage by area of the NORTHWEST PENFIELD HOMEOWNERS ASSOCIATION (NWPHA).....

Should you have any questions or any pertinent information to provide NWPHA with; or should you desire to be a member of this association, please contact your appropriate area representative.

++

The elected and appointed representatives of your township are ready and willing to hear your opinions, ideas and criticisms. RESIDENT HOMEOWNERS opposed to the construction and placement of a PUD in this area are encouraged to be present and take part in the formal public hearing regarding this application.....

PLAN TO ATTEND THIS HEARING AND MAKE YOUR FEELINGS KNOWN.....

MONDAY MAY 10, 1971.....8:00 p.m.

EXHIBIT I

********* NORTHWEST PENFIELD HOMEOWNERS ASSOCIATION NEWSLETTER # 7 *********

HERE WE GO AGAIN.....

"Good old Beacon Hills" (that area bounded by Scribner Road, Five Mile Line Road and Robert Road)

** Next Monday nite, May 10, 1971 at 8:00 p. m. in the Penfield Town Hall auditorium located on Atlantic Avenue application is being made to the Penfield Planning Board for sketch plan approval of a proposed PUD.....

YOUR PRESENCE IS NECESSARY AT THIS HEARING.....IN ORDER THAT YOU VOICE YOUR OPINION AND.....PROTECT YOUR PERSONAL PROPERTY VALUES.....

** This area is again faced with the possibility of the construction and placement of APARTMENTS and TOWNE HOUSES in the center of an area directly bounded by class " AA " housing on all sides.....

Will the development of this property lead to the devaluation of your own already existent PERSONAL PROPERTY???

**** Just where do we stand ?????????

Plan on participating before it's TOO LATE.....

****

EXHIBIT I

The following persons addressed the Board:

Mrs. John Bundschuh,	Representing the Penfield League of Women Voters.
Mr. Jonathan Post	Attorney for Mr.Audino
Mrs. George Gulick	75 Huntington Meadow
Mrs. Raymond Kuschel	155 St.James Dr.
Mr. Donald Sirianni	9 Christine Circle
Mr. Paul Mandina	1475 Five Mile Line Rd.
Myron Starks,	Architect from Jenkins, Wurzer-Starks
Mr. Michael Ireland	111 BelVista Dr.
George Shaw	Chairman Penfield Planning Board
Mrs. Shirley Mulig	164 St. James Dr.
Mr. Jim Brooks	795 Embury Rd.
Mr. Robert Herman	887 Hillary Lane
Richard Handler,	Architects from Handler and Grosso (Representing Dolomite Co.)
Wallace Ashnault	Attorney
Mrs. Ann McNabb	1996 Penfield Rd.
Mr. Tony Caldrone	Secretary Stanndco Developers
Mr. John Hostutler	34 Jackson Rd.Ext.
Mr. John Effinger	131 St.James Dr.
Mr. John Bickmore	18849 Blossom Rd
Mr. Robert Clifford	140 Stokton Lane
Janet Gray	35 Robert Rd.
Michelle Mandina	1470 Five Mile Line Rd.
Mrs. Irene Gossin	17 Parkview Dr.

There being no one else who wished to be heard, Mr. Frank declared the hearing closed

VERBATUM ON FILE IN TOWN CLERKS OFFICE
****

EXHIBIT I

The Town Clerk was requested by the Supervisor to read the Notice of the Hearing as published in the Penfield Republican, the official newspaper, and the Penfield Press on August 5, 1971 in connection with the rezoning of 38 acres of land located on the southeast corner of Plank Road and Five Mile Line Rd. from Residential "AA" to Commercial to permit the construction of a shopping Plaza and Motor Vehicle Supply Station.

Mr. Frank asked Mr. Callaghan if the matter was properly before the Board and Mr. Callaghan said that it was.

Vote of the Board

Howard Frank	"Aye"
Walter W. Peter	"Aye"
McFall Kerbey Jr.	"Aye"
T.Frank Lonergan	"Aye"
Gordon Scott	"Aye"

Upon the question all members of the Board having voted "Aye", the recommendation was declared adopted.

#4 This committee recommends the appointment of the following Dog Enumerators for the enumeration of the dogs in the Town of Penfield for the year 1972."

Edward Welch — Section # 1
1382 Creek St.
Webster, U.Y.

Mrs. Mildred Huehn — Section # 2
1350 Salt Rd
Webster, N.Y.

EXHIBIT I

Mr. Norman Sehm — Section # 3
38 Aspen Dr.
Rochester, N.Y.14625

Mrs. Marguerite Gray — Section # 4
1322 Hatch Rd.
Webster, N.Y.14580

It was moved by Councilman T. Frank Lonergan and seconded by Councilman McFall Kerbey Jr. that recommendation # 4 be adopted as submitted by the committee.
Vote of the Board

Howard Frank	"Aye"
Walter W. Peter	"Aye"
McFall Kerbey Jr.	"Aye"
T.Frank Lonergan	"Aye"
Gordon Scott	"Aye"

Upon the question all members of the Board having voted "Aye" the recommendation # 4 be adopted.

#5 In connection with the hearing held earlier in the meeting, concerning density limitations for PUD, a discussion was held by the members of the Board after which the following recommendation was adopted.
RESOLVED, by the Town Board of the Town of Penfield that the amended Zoning Ordinance of the Town of Penfield be, and the same hereby is, amended as follows:
Section 29-11.21 of the Amended Zoning Ordinance of the Town of Penfield is amended by adding thereto Paragraphs (5) and (6) to Sub-section D thereof as follows:
(5) Notwithstanding the several average density limitations hereinafter provided, the average density for the entire PUD shall

EXHIBIT I

not exceed four (4) dwelling units per acre.
(6) As a further standard and limitation on the permitted uses within a PUD District, the ratio of Multiple Dwelling units and Duplex (twoFamily) units to singe family detached dwelling units shall not exceed one (1) for one (1).
This amendment shall take effect immediately upon posting and publishing as required by law.

It was moved by Councilman T. Frank Lonergan and seconded by Councilman Walter Peter that recommendation #5 be adopted as submitted by the committee.
Vote of the Board

Howard Frank	"Aye"
Walter W. Peter	"Aye"
McFall Kerbey Jr.	"Nay"
T. Frank Lonergan	"Aye"
Gordon Scott	"Aye"

Upon the question a majority of the members of the Board having voted "Aye" the resolution was declared adopted.
****

Recreation and Social Services Committee

NOTICE OF ADOPTION
OF AMENDMENT TO THE
PENFIELD ZONING ORDINANCE

PLEASE TAKE NOTICE that at a regular meeting of the Penfield Town Board, held on September 7, 1971, an amendment to the Zoning Ordinance and to the official Zoning Map of the Town of Penfield was duly adopted. Such amendment as adopted, is as follows:

WHEREAS JENKINS - WURZER - STARKS, Architects and Planners, 1545 East Avenue, Rochester, New York, on behalf of the owners have made application for the rezoning of a parcel of land hereinafter described from "Residential AA" District to "Planned Unit Development" District, and,

WHEREAS the Planning Board has reviewed the proposal for the Planned Unit Development and has rendered a

favorable report to the Town Board with the proviso that the applicant reduce the density from that proposed, and,

WHEREAS the Monroe County Planning Council has considered the proposal for a Planned Unit Development on the premises hereinafter described and has recommended approval, and

WHEREAS a public hearing was duly called and held on August 17, 1971, at 8:00 O'clock P.M. at the Town Hall, Penfield, New York, to consider the application for rezoning, and,

WHEREAS it appears that the proposed Planned Unit Development for the premises hereinafter described falls within the intent and objectives of the Planned Unit Development District Ordinance of the Town, as amended, and would be in the best interest of the Town,

EXHIBIT J

NOW THEREFORE, BE IT ORDAINED, by the Town Board of the Town of Penfield that the Zoning Ordinances and the official Zoning Map of the said Town be and the same hereby is amended as follows:

SECTION 1. The official Zoning Map of the Town of Penfield is amended to transfer from "Residential AA" District to "Planned Unit Development" District the following described premises:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe and State of New York, and being in Town Lot #55, more particularly bounded and described as follows: Commencing at a point in the center line of Scribner Road, which point is the southwest corner of premises conveyed to the grantee by deed dated June 22, 1966 and recorded in the Monroe County Clerk's Office in Liber 3743 of Deeds at page 15, which point is also the southwest corner of premises conveyed to Stephen Leake by warranty deed dated May 5, 1836, and recorded in Monroe County Clerk's office in Liber 36 of Deeds at page 263; thence easterly in the south line of the premises conveyed to the grantee as aforesaid, 32 chains 39 links; running thence south along the west line of premises conveyed to said Stephen Leake,

EXHIBIT J

7 chains to a point in the north line of premises formerly owned by Calvin Rundel; thence west in the said Rundel's north line, a distance of 15 chains 55 links to the northwest corner owned by said Calvin Rundel; thence south in said Rundel's west line 11 chains 89 links; thence west parallel with the line of town lots 16 chains 84 links to a point in the center line of Scribner Road; thence north in the center line of Scribner Road 18 chains and 79 links more or less to the place of beginning.

Excepting therefrom, however, so much of the described premises as were conveyed by Luther C. Sampson and Rebecca C. Sampson to John W. Sampson by warranty deed dated March 10, 1964 and recorded in the Monroe County Clerk's office in Liber 207 of Deeds at page 206.

Being part of the same premises conveyed to Luther C. Sampson and Helen M. Sampson by warranty deed dated April 22, 1935 and recorded in the Monroe County Clerk's office in Liber 1761 of Deeds at page 7.

All that tract or parcel of land situate, lying and being in the Town of Penfield, County of Monroe and State of New York, and being part of town lot #56, more particularly bounded and described as follows: Commencing at a point in the center line of Scribner Road measured 1773.58 feet north of the intersection of the center lines of Scribner Road and Embury Road, which point is also in the south line of premises conveyed to Luther

Sampson by warranty deed dated March 5, 1853 and recorded in Monroe County Clerk's office in Liber 163 of Deeds at page 100; thence westerly at an included angle of 89° 35' 30" a distance of 723.57 feet to a point; thence northerly at an included angle of 90° 24' 30", a distance of 455.40 feet to a point; thence westerly at an excluded angle of 90° 25' 00", a distance of 1859.79 feet to an iron pin set in the west line of town lot #56; thence northerly at an included angle of 90° 44' 30" along the west line of said town lot #56, a distance of 467.58 feet to an iron pin; thence easterly at an included angle of 89° 52' 20", a distance of 2585.96 feet to a point in the center line of Scribner Road; thence south along the center line of Scribner Road, a distance of 950.76 feet to the point and place of beginning.

All as shown on a map made by Lewis E. Kohl, Inc. dated March 25, 1968.

THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe, State of New York, known as Town Lot 55, Township 13, Range 4, more particularly described as follows:

COMMENCING at a point in the center line of Five Mile Line Road at the southeast corner of premises conveyed to the party of the first part by deed recorded in Monroe County Clerk's Office in Liber 3294 of Deeds, at page 507, which point of beginning is also the northeast corner of premises owned by the party of the second part; thence (1) westerly at

an included angle of 90° 14' 46" along the north line of premises owned by the party of the second part a distance of 2628.12 feet to a point in the center line of Scribner Road, which point is also the northwest corner of premises owned by the party of the second part; thence (2) northerly along the center line of Scribner Road a distance of 362.50 feet; thence (3) easterly at an included angle of 89° 46' 16" a distance of 1246.07 feet to an iron pin; thence (4) northerly at an included angle of 270° 13' 44" a distance of 350.00 feet to an iron pin; thence (5) easterly at an included angle of 89° 46' 16" a distance of 442.81 feet to a point; thence (6) southerly at an included angle of 89° 45' 14" a distance of 672.50 feet to a point; thence (7) easterly at an included angle of 270° 14' 46" a distance of 933.00 feet to the center line of Five Mile Line Road; thence (8) southerly along the center line of Five Mile Line Road a distance of 40 feet to the point and place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe and State of New York, being the south one-half of the south part of the north division of Town Lot 55 bounded as follows: Beginning in the east line of said north division in the center of the highway known as the Five Mile Line Road at a point ten (10) chains and eighty-one(81) links distant south of the southeast corner of one hundred (100) acres of land taken from the north division formerly owned by

Stephen Leake;from thence running west thirty-nine (39) chains and eighty-two (82) links to the west line of said division being also the center of the Scribner Road so called; thence running south in said west line and the center of the Scribner Road ten (10) chains and eighty-one (81) links to the south line of said south part of the north division of said Lot No.55; thence east along said south line thirty-nine (39) chains and eighty-two (82) links to the center of the said Five Mile Line Road; thence north along said center of road ten (10) chains and eighty-one (81) links to the place of beginning and containing forty-three (43) acres and thirty-seven (37) rods of land, more or less.

SECTION 2. This amendment is conditioned upon the following:

a) The modification of the plan for the Planned Unit Development to conform to the density limitation contained in the Planned Unit Development Ordinance, as amended.

b) The execution of an agreement between the developer and the TOWN OF PENFIELD which defines (1) the responsibilities of the developer, the owners

and occupants of the developed lands, and the TOWN OF PENFIELD in the improvement, operation and maintenance of common properties and facilities including private streets, drives, service and parking areas and recreation and open-space areas, and (2) the guarantee by which performance will be insured.

c) Payment of a sanitary sewer entrance fee for each unit in an amount to be determined by the Town Board and which will reflect the development at a greater density of PUD than the average density of a residential development and which will also reflect the need for additional sewerage capacity before the approval of the site plan for development of the planned fourth stage.

d) The filing of a satisfactory

letter of credit in an amount sufficient to cover the estimated costs as determined by the Town Engineer of roads, gutters, side-walks, sewers and sewer systems, drains and drainage systems, lighting systems, water systems, landscaping and sewer entrance fees.

e) The securing of a site plan approval in accordance with all provisions of the Zoning Ordinance with respect to a Planned Unit Developm ent District and the execution of any agreements between the developer and the TOWN OF PENFIELD required by the Planning Board to insure the construction of the development according to the site plan and in the chronological order of planned construction.

SECTION 3. This amendment shall take effect immediately upon posting and

publishing as required by law.

Dated at Penfield, New York

September 14, 1971

Earl Rapp,
Town Clerk Penfield
New York

EXHIBIT K

RESOLUTION

PENFIELD TOWN BOARD JANUARY 3, 1972

WHEREAS the Town Board of the Town of Penfield heretofore and on the 7th day of September, 1971 adopted an Ordinance amending the Zoning Ordinance and the official Zoning Map of the Town of Penfield by which Ordinance the premises hereinafter described were transferred from "Residential AA" District to "Planned Unit Development" District, and

WHEREAS such Ordinance was adopted over the objections and protests of a large number of town residents, and

WHEREAS a public controversy arose immediately following the adoption of such Ordinance as to the wisdom and propriety of the rezoning accomplished by such Ordinance, and

EXHIBIT K

WHEREAS by reason of all the foregoing the present Town Board of the Town of Penfield feels that there is a serious question as to whether the public health, safety and welfare of the residents of the Town of Penfield has in fact been served by the enactment of said Ordinance, and

WHEREAS by reason of all the foregoing the present Town Board of the Town of Penfield feels that there is a serious question as to whether the considerations for long range planning in the Town of Penfield have in fact been served by the enactment of said Ordinance, and

WHEREAS therefore the Town Board of the Town of Penfield wishes to review, an if so advised, repeal the said Ordinance, now

EXHIBIT K

therefore be it

RESOLVED that the following proposed Ordinance hereby be referred to the Planning Board for report to the Town Board: "NOW THEREFORE, BE IT ORDAINED, by the Town Board of the Town of Penfield that the Zoning Ordinance and the official Zoning Map of the said Town by and the same hereby is amended as follows:

Section 1. The Ordinance adopted by the Town Board of the Town of Penfield on September 7, 1971 amending the Zoning Ordinance and the official Zoning Map of the Town of Penfield by transferring the premises hereinafter described from "Residential AA" District to "Planned Unit Development" District be and it hereby is repealed.

EXHIBIT K

Section 2. The official Zoning Map of the Town of Penfield is amended to transfer from "Planned Unit Development" District to "Residential AA" District following described premises:

> ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe and State of New York, and being in Town Lot #55, more particularly bounded and described as follows: Commencing at a point in the center line of Scribner Road, which point is the southwest corner of premises conveyed to the grantee by deed dated June 22, 1966 and recorded in the Monroe County Clerk's Office in Liber 3743 of Deeds at page 15, which point is also the southwest corner of premises conveyed to Stephen Leake by warranty deed dated May 5, 1836, and recorded in Monroe County Clerk's Office in Liber 36 of Deeds at page 263; thence easterly in the south line of the premises conveyed to the grantee as aforesaid, 32 chains 39 links; running thence south along the west line of premises conveyed to said Stephen Leake,

EXHIBIT K

7 chains to a point in the north line of premises formerly owned by Calvin Rundel; thence west in the said Rundel's north line, a distance of 15 chains 55 links to the northwest corner owned by said Calvin Rundel; thence south in said Rundel's west line 11 chains 89 links; thence west parallel with the line of town lots 16 chains 84 links to a point in the center line of Scribner Road; thence north in the center line of Scribner Road 18 chains and 79 links more or less to the place of beginning.

Excepting therefrom however, so much of the described premises as were conveyed by Luther C. Sampson and Rebecca C. Sampson to John W. Sampson by warranty deed dated March 10, 1864 and recorded in the Monroe County Clerk's Office in Liber 207 of Deeds at page 206.

Being part of the same premises conveyed to Luther C. Sampson and Helen M. Sampson by warranty deed dated April 22, 1935 and recorded in the Monroe County Clerk's Office in Liber 1761 of Deeds at page 7.

EXHIBIT K

All that tract or parcel of land situate, lying and being in the Town of Penfield, County of Monroe and State of New York, and being part of town lot #56, more particularly bounded and described as follows: Commencing at a point in the center line of Scribner Road measured 1773.58 feet north of the intersection of the center lines of Scribner Road and Embury Road, which point is also in the south line of premises conveyed to Luther Sampson by warranty deed dated March 5, 1853 and recorded in Monroe County Clerk's Office in Liber 163 of Deeds at page 100; thence westerly at an included angle of 89°35' 30" a distance of 723.57 feet to a point; thence northerly at an included angle 90°24'30", a distance of 455.40 feet to a point; thence westerly at an excluded angle of 90° 25' 00", a distance of 1859.79 feet to an iron pin set in the west line of town lot #56; thence northerly at an included angle of 90°44'30" along the west line of said town lot #56, a distance of 467.58 feet to an iron pin; thence easterly at an included angle of 89°52'20", a distance of 2585.96 feet to a point in the center line of Scribner Road; thence south along the

EXHIBIT K

center line of Scribner Road, a distance of 950.76 feet to the point and place of beginning.

All as shown on a map made by Lewis E. Kohl, Inc., dated March 25, 1968.

THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe, State of New York, known as Town Lot 55, Township 13, Range 4, more particularly described as follows:

COMMENCING at a point in the center line of Five Mile Line Road at the southeast corner of premises conveyed to the party of the first part by deed recorded in Monroe County Clerk's Office in Liber 3294 of Deeds, at page 507, which point of beginning is also the northeast corner of premises owned by the party of the second part; thence (1) westerly at an included angle of 90°14'46" along the north line of premises owned by the party of the second part a distance of 2628.12 feet to a point in the center line of Scribner Road, which point is also the northwest corner of the premises owned by the party of the second part; thence (2) northerly along the center line

EXHIBIT K

of Scribner Road a distance of 362.50 feet; thence (3) easterly at an included angle of 89°46'16" a distance of 1246.07 feet to an iron pin; thence (4) northerly at an included angle of 270°13'44" a distance of 350.00 feet to an iron pin; thence (5) easterly at an included angle of 89°46'16" a distance of 442.81 feet to a point; thence (6) southerly at an included angle of 89°45'14" a distance of 672.50 feet to a point; thence (7) easterly at an included angle of 270°14'46" a distance of 933.00 feet to the center line of Five Mile Line Road; thence (8) southerly along the center line of Five Mile Line Road a distance of 40 feet to the point and place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe and State of New York, being the south one-half of the south part of the north division of Town Lot 55 bounded as follows: Beginning in the east line of said north division in the center of the highway known as the Five Mile Line Road at a point ten (10) chains and eighty-one (81) links distant south of the southeast

EXHIBIT K

corner of one hundred (100) acres of land taken from the north division formerly owned by Stephen Leake; from thence running west thirty-nine (39) chains and eighty-two (82) links to the west line of said division being also the center of the Scribner Road so called; thence running south in said west line and the center of the Scribner Road ten (10) chains and eighty-one (81) links to the south line of the said south part of the north division of said Lot No. 55; thence east along said south line thirty-nine (39) chains and eighty-two (82) links to the center of the said Five Mile Line Road; thence north along said center of road ten (10) chains and eighty-one (81) links to the place of beginning and containing forty-three (43) acres and thirty-seven (37) rods of land, more or less.

Section 3. This Ordinance shall take effect immediately upon publication and posting as required by law, and it is hereby

EXHIBIT K

FURTHER RESOLVED that said proposed amended Ordinance hereby be referred to the Monroe County Planning Council for its recommendations, and that it be

FURTHER RESOLVED that the Town Clerk be and he hereby is directed to forward a copy of this resolution, certified by said Town Clerk under the corporate seal of the Town of Penfield and showing the date of its passage and entry in the minutes, to Jenkins-Wurzer-Starks, Architects and Planners, 1545 East Avenue, Rochester, New York 14610, who had made application on behalf of the owners of the aforesaid described premises and a copy to Joseph C. Audino, 108 Keyel Drive, Rochester, New York 14625.

EXHIBIT L

Zoning Referral #PN-67
Town Board
Town of Penfield
February 2, 1972

RE: Application of Town Board for rezoning of a P.U.D. (Scribner to Five Mile Line Road) to "AA"

The Monroe County Executive Committee recommends disapproval of PN-67. This is a referral requesting a zoning change from Planned Unit Development to AA Residential in the area of Scribner Road and Five Mile Line Road. The following arguments are submitted for consideration:

1. The resolution does not develop substantive argument to refute the recommendation of the Planning Council in the earlier referral PN-47 dated June 24, 1971. (See copy of the recommendation attached.)

2. The resolution does not allege that this P.U.D. is contrary to the Town P.U.D. Ordinance.

3. The Planning Council has sponsored the development of model ordinances to encourage the variety of housing types that are made available through this legislation. If the Council would approve the proposed rezoning it would be denying the broad range of housing types and price ranges it has intended to

EXHIBIT L

promote, which would have a detrimental effect on the state of housing in Monroe County.

MFR:met

EXHIBIT M

Penfield Press
5/25/72

Sewer Moratorium Affects Applications

The Penfield Planning Board met Monday evening, May 22, in the Penfield Town Hall with all members present -- chairman George Shaw, Timothy Westbrook, James Hartman, John D. Williams, and Richard Ada. Also present were Director of Public Works Robert Feller, Engineer John Karle; Attorney Samuel D'Attilo; and secretary Mrs. Tompkins.

The moratorium on building in Sewer District Three affected three of the applications before the Board. In the scheduled hearing of George Styliades of 181 Winbourne Road, Rochester, for preliminary site plan approval for a proposed 10-lot subdivision to be known as Green's Estates at the northwest corner of Embury and Qualtrough Roads, the applicant was advised that new building is not permitted there because of the overloading of the treatment plant in the sewer district. Engineer Karle advised Styliades to get advice from his own engineer on alternative sewage disposal systems for the interim period before Penfield can connect to the planned interceptor sewer of the Pure Waters program.

Then, in the single miscellaneous matter on the agenda, Louis V. Jeff, for Dominic Parrone and associates, asked permission to build on one lot of a 15-lot subdivision which is being held up by the moratorium. He said he planned to build a septic system to serve the single home but chairman Shaw advised him that the Planning Board could not give him authority to do so.

The Beacon Hills Planned Unit Development proposal of J. C. Audino, long tabled, was brought before the board in a new form Monday night by an attorney for Audino. He said that differences had been settled with objectors to the PUD (who had actually brought a lawsuit against the town for zoning the land to allow it) and that he would obtain a letter from Frank Sidoti, the opponents' attorney, saying that their objections had been met. The density of the overall project has been reduced to 313 dwelling units -- 253 four-family buildings in the central area and 162 single-family homes around the periphery. A berm would be constructed along Scribner Road to reduce the view of the PUD for neighbors on Timberline Drive and Old Barn Circle. The attorney said that a public use was being considered for the green areas in the development, and that Penfield supervisor Irene Gossin had suggested a conservation easement to keep the land in its natural state.

Two other changes were proposed. A sidewalk would be provided, the attorney said, to the Scribner Road School. Then, because of the moratorium on building in Sewer District Three, he said Audino proposed to build a lift station and a force main which would take sewage from the project 600 feet north to Scribner Road School facilities, which are in District One.

In other business before the board, a hearing on the application of Wallace Ashmuk for an auto sales agency at the corner of Penfield and Webster-Fairport Roads consumed an hour of the meeting's time. Several residents spoke against the proposal and one said an auto agency was needed nearby.

Daniel Giraud of Todd and Giraud architects asked approval of plans for a fire substation on Qualtrough Road behind the District Administration Building of the school district. The building would have doors in front and back, a well-designed driveway system, and pedestrian sidewalks around the building. Joseph Kuhn, chairman of the Board of Fire Commissioners, explained the need for the substation in that part of town and said that for the present it would house only one truck.

The only other item considered by the board was an application of Richard Ketenburg for Audbet, Inc., for preliminary approval of a four-lot subdivision on Clark Road opposite the Emil Muller property. No plans were made for houses, yet, Ketenburg said, but they were expected to cost from $50,000 to $75,000 when built. Engineer Karle questioned a possible erosion problem on lot two of the property.

The board took no final action before adjourning the meeting about 10:30 p.m.

BEST COPY AVAILABLE

EXHIBIT N

P R E S S R E L E A S E

THE MONROE COUNTY HOUSING COUNCIL
121 North Fitzhugh Street
Rochester, New York 14614
716-546-3700

A.M. Tuesday, August 17, 1971
P.M. Tuesday, August 17, 1971
Weeklies before August 20, 1971

James R. Hughes, Consultant in Community Relations
John C. Mitchell, Housing Director, Citizens Planning Council

RE: STATEMENT OF THE MONROE COUNTY HOUSING COUNCIL WITH RESPECT TO THE PROPOSED AMENDMENTS TO THE PENFIELD PLANNED UNIT DEVELOPMENT (P.U.D.) ORDINANCE.

The opening sentence of the existing P.U.D. Ordinance for the Town of Penfield states that it is its intent "to provide flexible land use and design regulations through the use of performance criteria so that small- to large-scale neighborhoods... may be developed within the town that

incorporate a variety of residential types and nonresidential uses."

It is therefore most disappointing to see under consideration here, amendments to that ordinance which are diametrically opposed to this statement of intent. Neither a density limit nor a specific designation of 50% single family homes are performance criteria; they are specific, rigid, and inflexible requirements which may or may not bear any relation to the purpose of development. We must respectfully request therefore that the proposed amendments before you tonight be rejected.

There is no need for us to once again reiterate the dimensions of the housing shortage facing our community, or the increasing homogenization of our society.

It was, in fact, a very dramatic effort on the part of Penfield to address these problems that resulted in the adoption of this ordinance in the first place. Thus, it is doubly inconsistent to see the question before you at this time. Surely, the proposals that have already been presented to the Town under the existing ordinance have shown excellent design, in fact, far superior to that in evidence in most of the subdivisions in this community. Under the circumstances, it seems foolhardy to impose even more stringent regulations upon the one mode of development that has brought the highest level of design and inviornmental consideration to our community. If design excellence can be equated with a 20% change in density

EXHIBIT N

as an absolute factor, then we have yet to see evidence of the fact.

As a final point, it is worth noting that there is more than enough control in the ordinance as it exists today to ensure quality development. The application and approval process coupled with the site plan approval process offer our Town greater control over the content of a P.U.D. than we have over any development in Penfield except for those facilities that the Town itself builds. Indeed, there is also on the agenda this evening a particular project which is undergoing the strictest of scrutiny. These amendments will add nothing to the control we have already and only serve to introduce but one more arbitrary constraint on a site designer.

EXHIBIT N

In conclusion, an amendment that does not improve the existing situation but, on the contrary, only adds to the list of unnecessary obstacles to sound planning, deserves no consideration from this body. The Monroe County Housing Council accordingly recommends that you reach a negative verdict on this proposal and instead, focus your attention on our community development objectives of maximum choice to persons at all economic levels along with a creative use of the land that respects our environment.

EXHIBIT N

HOUSING COUNCIL OF MONROE COUNTY

October 8, 1971

Town Board
Mr. Howard Frank, Supervisor
Penfield Town Hall
Atlantic Avenue
Penfield, New York 14526

Dear Mr. Frank:

At a time when the Monroe County Legislature has urged the addition of 79,000 new housing units by 1980, which includes 47,400 units for low and moderate income households, it is most disappointing to note the action of your Board in making Planned Unit Development highly restrictive. It is difficult indeed to understand how this action can be helpful in meeting the above targets. Even if Penfield were to retain its current share of 3% of the housing units in Monroe County, the above goal would call for 2,370 new units in Penfield. However, Penfield's share of Monroe County's growth over the past ten years has been more on the order of 6 1/2% of the total which would call for 5,135 new units in Penfield, over half again as many new units as were authorized throughout the entire decade of the sixties.

Even more critical than numbers however, is the distribution of these

EXHIBIT N

by value and rent; and here is where your PUD action is most damaging. Only one-fourth of the owner-occupied housing in the Town of Penfield may be valued at less that $25,000. Fully one-third costs in excess of $35,000. The median value of housing in Penfield is the third highest in the county, and of the houses for sale, the median value of $36,000, is second highest in the county, a price which only 12% of the residents of Monroe County can afford. 45% of the families residing in the County have low or moderate incomes. Penfield families who have outgrown their houses or who have had their children leave can not even afford to remain in the Town.

The rental picture is no better, with the median rent for two-bedroom apartments being $195 monthly. Penfield is outdistanced by only three other towns in the county as far as rentals go. The density restrictions placed on PUD's by your recent amendment effectively foreclose any changes in these characteristics. At a time when water and sewer service is not dependent upon on-site facilities, when sensitive environmental design can create better living areas at higher densities, and when economic conditions dictate more efficient use of land to even meet middle income demands, it borders on the irresponsible to stake out an arbitrary density figure when, in fact, all three submissions to the Town

EXHIBIT N

of Penfield under the original ordinance far surpassed any existing subdivision in the Town in terms of quality of design.

Our statement to you of August 17th clearly expounded these views and needs no repetition here. We were joined in them by many other concerned citizens of the Town of Penfield. We also note that members of your own Town Planning Board were taken aback by this precipitate action. We therefore call upon you once again to reconsider this serious step you have taken and move instead in the direction of sound and responsible planning and development for the Town of Penfield. The Housing Council as always, stands ready to assist you in this process in any way you see fit.

Sincerely,

/s/ Victor F. Vinkey
Victor F. Vinkey, Chairman
Political Actional Committee

VFV:tjm

EXHIBIT O

COOPERATIVE HOMEOWNERSHIP
FOR
PENFIELD

EXHIBIT O

THE NEED

Many years ago,Penfield was a small, rural community, self-sufficient, independent, whole. It was the kind of place we recall, with the nostalgia reserved for by-gone times, as a home for "rich" people, plain people, old people, young people, business people and farming people. There was room for all.

Following World War II, Penfield was caught up in the building boom. It became more and more a bedroom community, its residents working elsewhere. As the years passed it became increasingly difficult for people of moderate income to find housing they could afford.

In the past year was added the additional burden of a sharp increase in property taxes and a substantial hike in the interest rate on home mortgages. The result: a "specialized" community, a community in which only a relatively small range of occupations and income levels are represented. Penfield has become a community in which many of the people who serve us every day, in our schools and local businesses, are unable to afford a home.

As it continues to grow, Penfield will be a more interesting place, a more stable place, if a way can be found to accommodate these people. We need them. We need the enthusiasm of young people

EXHIBIT O

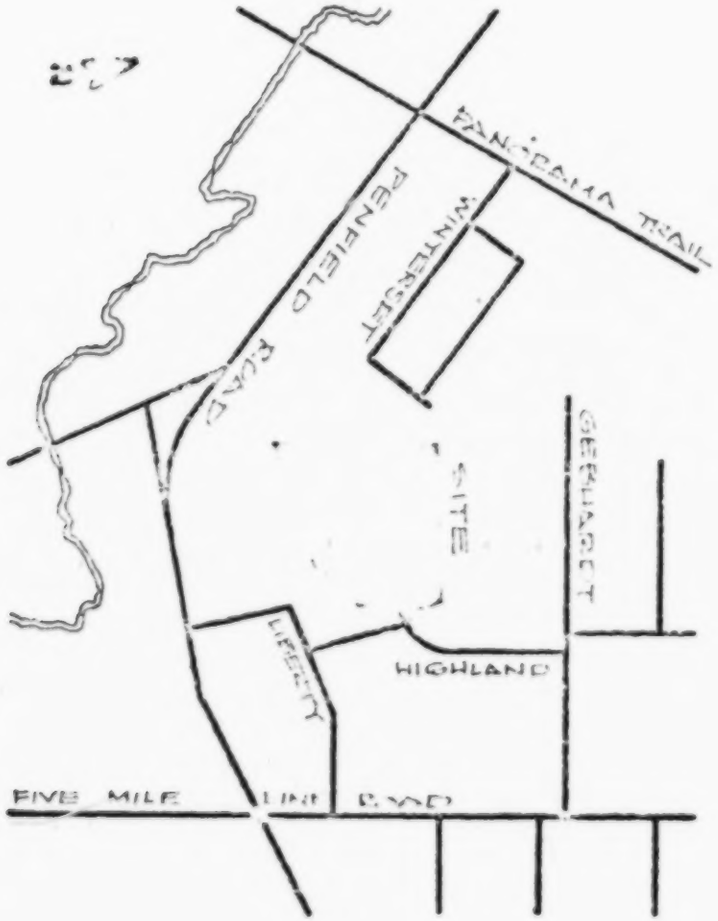
just beginning their productive lives. We need the wisdom and the sense of having roots in the past of older people. The teacher, the local tradesman, "the butcher, the baker, the candlestick-maker", people from all walks of life; we need them all.

A SOLUTION

The Penfield Better Homes Corporation (PBHC), a non-profit group of concerned citizens, a majority from Penfield, has studied the need for more diversified housing in Penfield. During the past two years, PBHC has consulted with Penfield town officials, with Monroe County Planning Council, and with most of the housing experts in Monroe County, exploring ways to meet the housing needs of persons earning approximately $5,000 - $8,000 yearly.

The solution arrived at by PBHC is non-profit cooperative housing in which families own, rather than rent, their homes. There are sound reasons why cooperative housing offers a superior alternative to rental projects for people of moderate income, both for the residents of the cooperative and for the community. Families living in cooperative housing units enjoy tax benefits of home ownership denied to renters. The element of ownership and the self governing management arrangement which involves members of the Coop tends

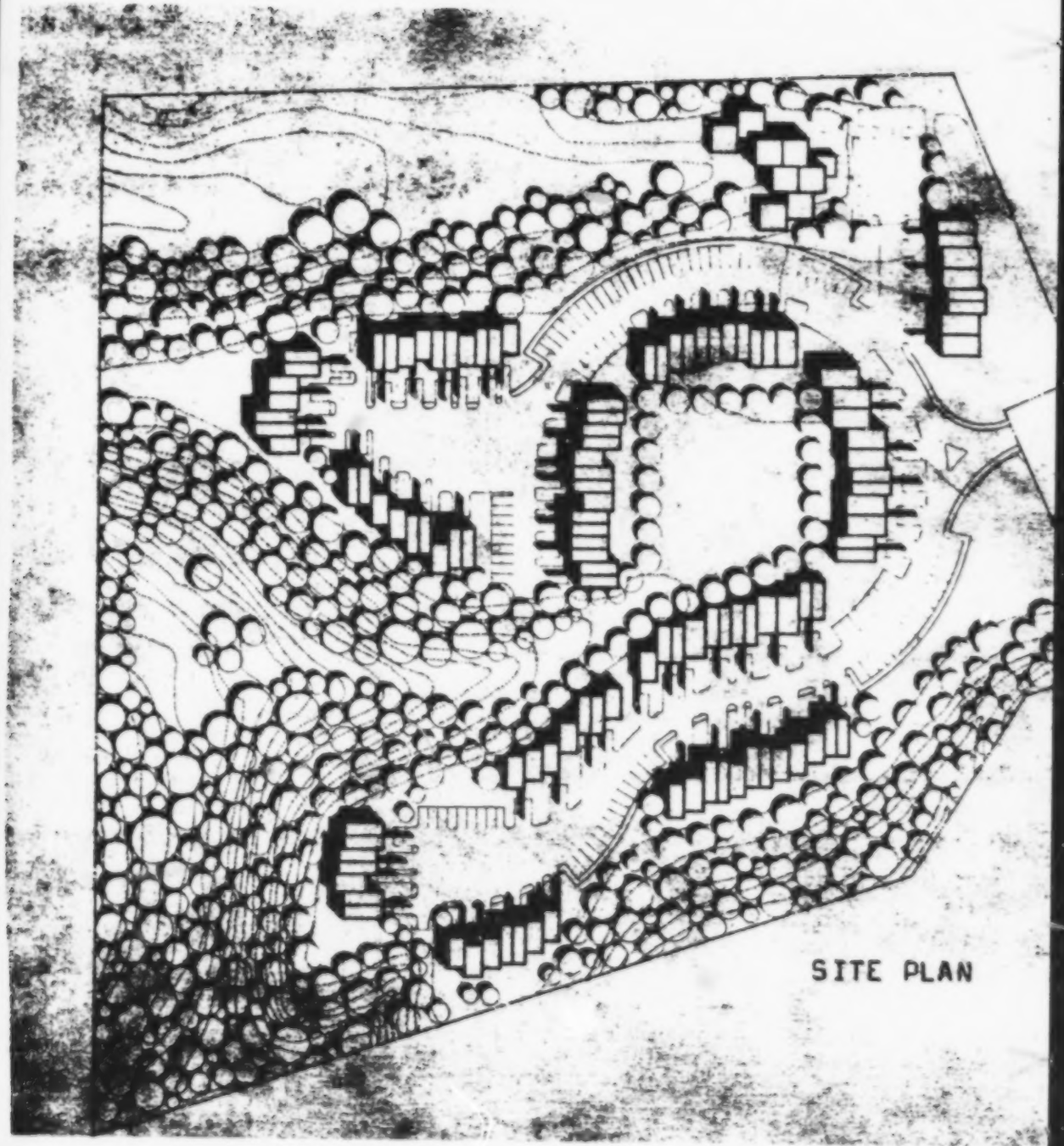
to create an atmosphere of mutual respect; thus a more stable neighborhood environment results. It is proposed by PBHC that a cooperative housing complex, "Highland Circle", incorporating the features outlined above, be built in Penfield. The location we have in mind is located north of Penfield Road, fronting on Highland Drive. (See map.)



On more than 15 acres only 130 units will be built. The remainder of the land will be used for recreational area and buffer.

The present hope is to begin construction of pre-sold units in about a year, pending approval for rezoning and approval of plans by the Town of Penfield, and pending FHA approval of our plans and the project in general. FCH Services, Inc., Stamford, Conn., a non-profit housing consultant organization, has been chosen by PBHC to provide advice and assistance. FCH has assisted in completion of more than 20,000 housing units throughout the country during the past two years.

The builder will be the MSH Development Corporation, Rochester, N.Y.; general contractor Jack Sandman. The architect will be Robert James Macon, A.I.A., Rochester, N.Y.



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QUESTIONS AND ANSWERS

Let's consider for a moment a few of the effects of the proposal on the community.

Q. What will be the effect on Penfield schools?

A. The question really is: how will the number of public school children per dwelling unit in Highland Circle compare with the number of children from other dwelling units in Penfield? Apartments (Browncroft, Knollbrook, Panorama Skyline, Brebeuf, Pennwood, Penn Lane) average .2 child per unit. The average number of public school children per single family home is 1.07. (These figures sound low until it is remembered that many children are pre-school age, college age, or attend private schools.) For purposes of estimation, let us equate the one and two bedroom units in Highland Circle with the apartments, and the three and four bedroom units with private homes. We presently plan a bedroom mix of 15, 70, 30 and 15 one, two, three, and four bedroom units, respectively. This allows us to estimate the number of public school children added to Penfield public schools: 85 x 0.2 + 45 x 1.07 = 65.

EXHIBIT O

Q. How would traffic in the area be affected?
A. With the help of a traffic engineer from the County Planning Council, a traffic study was made of streets surrounding the site. The study showed that anticipated traffic would cause "no appreciable effect on the subjective quality of the neighborhood; and does not even begin to approach the physical capacities of the network". Also, the close proximity of the site to public transportation should eliminate some drivers.

Q. How about water, drainage, and sewage?
A. The capacity of existing systems for all three is more than adequate to meet the added demand. Drainage on the building site was found to **be excellent.** Storm water will be carried to the bottom of the gully by drain pipes to prevent erosion. The cost of sewers for the area will be shared by more people, thereby reducing charges for present residents.

**** picture omitted***

Q. How will the general appearance of the neighborhood be altered?
A. One thing that seems certain is that the area will be enhanced by the project. Mr. Sandman, long a Penfield builder, is sensitive to the feelings of local residents. Mr. Macon is an architect with a feeling for what is appropriate to the situation--in terms of human beings, materials, and physical surroundings. He

EXHIBIT O

will provide living quarters that are sensible, gracious, and enduring. Existing terrain will be used to its best advantage, preserving what is useful, improving on that which is not.

Q. What is the per acre density?
A. Highland Circle will have 8 units per acre (Less than the present town house ordinance allows).

Q. Who will live here?
A. Anyone demonstrating acceptable credit with income between about $5,000 and $8,000 yearly (as defined by FHA Law 236) is welcome.

Q. How will the property be maintained?
A. Property maintenance will be the job of a management firm hired by the new home-owners, all of whom will have membership and voting rights in the cooperative.

Q. What will be the total cost of the project?
A. The total cost of this project will be in excess of $2,000,000 or about $20,000. per housing unit.

**** pictures omitted****

EXHIBIT O

CONCLUSION

In the end, the proper question seems to be, not should we build moderate income housing, but can we afford not to. Can the industries that employ so many Penfield people survive and grow without the middle income technicians, clerical personnel, and other needed non-professional employees? Many of these jobs go begging now. What will happen in the future?

Penfield town officials have urged local citizens to come forward with just such a proposal. Now the opportunity is here to have Penfield benefit from the expertise of professionals in many fields who have bent their talents toward the planning and success of this project.

EXHIBIT O

WORKING MEMBERSHIP

Clarence Archie
Mr. and Mrs. John Bickmore
Michael Doran
Mr. and Mrs. Kenneth Gunther
J. Donald Hare
Clarence Heininger
Mrs. Martin Korn
Edward Lind
Dr. and Mrs. Neal McNabb
Rev. Richard Nygren
Mrs. Stanley Patten
Richard Regen
Dr. and Mrs. A.P. Scheiner
Mrs. Arthur Schmale
Mr. and Mrs. Robert Tischer
Stanley Tracy
Mr. and Mrs. James Wood
Stanton G. Levin of
Johnson, Reif and Mullan, attys.

EXHIBIT P

Soil Review
of Proposed Apartment Site
Town of Penfield

Below are listed the soils that exist in this area. I think you realize that this area is old glacial deltaic deposits and they are quire deep, very erosive to wind and water.

26 B-2 Colonic Loamy Fine Sands.
These soils are deep, well to excexxively drained, loamy fine sands. Dominant slope in the area is from nearly level to sloping. Average about less than 4 feet per hundred. These soils are subject to severe erosion by water and wind if vegetation is removed. During periods of development these areas can cause severe local sand storms.

22 EF-13 Arkport - Colonic Soils on steep slopes.
The soils are a combination of the previously described soils and a finer textured soil called Arkport Very Fine Sand Loam. The Arkport soils contain more silt and finer sands. They are subject to severe water erosion. These areas are well drained, and deep. The dominant slope is greater than 25%, or 25 feet per 100 feet. In most places it will exceed 35 feet per 100 feet.

EXHIBIT P

General Recommendations for Changes of Land Use to More Intensive

1. No structures, building, roads, parking lots, etc., should be located closer than 30 feet to the crest of this steep sloping area. Shown on the attached map in blue. I would strongly recommend that if the area is developed, that the developer be required to construct a snow fence along the line shown in blue. This will keep construction equipment from denuding the steep area and adjacent area of vegetation and causing serious erosion problems. Plus, it will assure the present vegetation to be preserved on this steep area. This should be done before any equipment is allowed on the site.

2. Bearing test of soil material, in relation to weight of structure, should be required. There are some very unstable conditions at 3 to 6 feet in this area.

3. Grading on the relatively flat area should be held to a minimum. Just grading to construct street and parking lots would be ideal. All structure would be built on present topography. I would also suggest that pre-staking of roads, parking lots and structure location be required and have the Town review the site before construction equipment is allowed on site.

4. After initial earth moving has taken place, required temporary seeding during construction. Erosion during development on these soils can be very severe during development. Specifications for temporary seeding can be obtained from the Soil Conservation Service office.

5. All storm water, surface, downspouts, and sump systems to be collected and piped to the bottom of this steep slope. The storm sewer conduit should have anti-seep collars in this steep area, to insure that no future gullying occurs, due to lateral piping of water.

6. Control clearing of area for construction of the storm system in this steep area disturbs a minimum of present vegetation. Require strict erosion control measures during and after construction.

7. Require sediment basin to be constructed before any disturbing of soils is started. This will insure protection of the areas below from sedimentation of storm sewers and roads. This would only be for during construction and a short period after. Design for this can be obtained from local Soil Conservation Service office. Make this sediment basin a prerequisite for approval of start of any project.

9. Either required complete sodding of

disturbed area so as to control erosion completely,(this would be best) or have written strict control on how the area is to be seeded and mulched.

10. Require that all topsoil be replaced on the site. This will make it easier to establish vegetation, reduce runoff and erosion.

11. Any plan proposed in this area should have a complete vegetative and landscaping plan to show how steep slopes are going to be protected from heavy foot traffic, and how the neighboring area is going to be screened.

12. All surface drainage on development site should drain toward streets and be collected in storm sewer system.

EXHIBIT Q

COUNTY OF MONROE

NEW YORK

200 County Office Building
Rochester, N.Y. 14614
Telephone: 454-7200 Ext.272

Alexander Gray
Director of Public Works and
Superintendent of Highways

December 3, 1969

Mr. John L.Callaghan, Attorney
Planning and Zoning Board of Appeals
Town of Penfield
Penfield, New York, 14526

Re: Traffic Survey

Dear Mr. Callaghan:

This department has taken traffic counts on Gebhardt Road, Liberty Street, Five Mile Line Road and Penfield Road at the locations requested in your October 8th letter. The date has been edited and the traffic counts are as follows: (see map)

Road Name	DHV	ADT
Gebhardt Road	289	1715
Liberty Street @ Five Mile Line Road	78	560
Liberty Street @ Penfield Road	139	1289

EXHIBIT Q

Road Name	DHV	ADT
Five Mile Line Road	581	8710
Penfield Road	858	13845

(Dates counts were taken: October 29, 1969 thru November 11, 1969).

The data from this traffic survey indicates that the traffic volumes on Liberty Street and Gebhardt Road which are town roads are operating at the lower end of their rated capacity. Five Mile Line Road, a county road is also operating below its rated capacity and Penfield Road, a state highway is operating above its rated capacity. Therefore the only facility which is operating above capacity is Penfield Road and this facility is programed for reconstruction in the near future. The increase in traffic by the proposed apartment project will not have an adverse effect on any of the facilities included in this traffic survey.

Very truly yours,

/s/ Alexander Gray
Alexander Gray
Director of Public Works

AG:SL::ars
CC: H.Frank
P.Bailey

EXHIBIT R

Brief from Robert J. Anderson,
Syrac. U. Law School, Zoning
Authority (hired by us as
consultant)

October 27, 1969

John Bickmore, President
Penfield Better Homes Corp.
Rochester, New York 14625

Dear Mr. Bickmore:

You have invited me to comment on the question whether an amendment of the zoning ordinance of the Town of Penfield creating a Town House Dwelling District on a sixteen-acre parcel of land (hereinafter more specifically described) would be vulnerable to legal attack on the ground of spot zoning. It is my opinion that such an amendment would not constitute spot zoning and that it would be sustained in the event of such a challenge.

EXHIBIT R

Reviewing the question posed above, I examined the zoning ordinance of the town, including the amendment of May 12, 1969 which created a Town House Dwelling District but did not assign a geographic location to any such district. In addition, I examined the zoning map of the town and map of the area in issue which shows existing uses and topographical features of the vicinity of the proposed change. Finally, I discussed with your representatives the history of your proposed development and its principal physical characteristics. My conclusions have been reached by applying the New York precedents to my understanding of the facts gleaned from these sources.

The site in question (hereinafter

called "the site") is a parcel of approximately 16 acres located in the southwestern corner of the Town of Penfield. It is an undeveloped and partially wooded area currently zoned Residential A to permit one-family dwellings, two-family dwellings, certain lodging or boarding houses, and other specified uses not here relevant. Land adjacent to the northern border of the site is occupied by Cobbles School. The western portion of the site drops sharply a distance of about 80 feet. Land adjacent to the site on its western boundary is zoned Residential A, and land further west and southwest is divided variously into apartment, commercial and industrial districts. The southern boundary of the site abuts

undeveloped Residential A land and land zoned and recently developed for multiple dwellings. The eastern boundary of the site abuts land zoned and developed as Residential A. A commercial district and an additional apartment district are located southeast of the site.

An attack on a zoning amendment which asserts that such amendment constitutes spot zoning is essentially a contention that the amendment was not adopted in accordance with a comprehensive plan for development of the community. The Court of Appeals has defined spot zoning as "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners . . .;

'spot zoning is the very anthesis of

planned zoning.'" [Rodgers v. Tarrytown, 302 NY 115, 96 NE2d 731 (1951).] While this memorandum will comment at some length concerning the specific features of the proposed amendment which militate against any conclusion that it is spot zoning, it seems worth pointing out that the amendment in question, when viewed in the context of the existing zoning pattern of the town, seems generally consistent with that pattern. It appears to forward the plan rather than to run counter to it.

It is clear that the New York courts examine the zoning ordinances and map to determine what the community's plan is. [Walus v. Millington, 49 Misc 2d 104, 266 NYS2d 833 (1966); additional cases are collected in Anderson, Zoning Law and Practice in New York State,

§5.02.] This kind of examination of the Penfield ordinance and map discloses that the bulk of the land in the town is zoned Residential AA, the most restrictive residential classification. It shows further that a few scattered commercial zones have been created but that most commercial and industrial uses have been confined to blocked-out and contiguous areas in the northwest and southwest corners of the town. Where apartments have been permitted, their districts have been created from time to time in these sections, and they have been small districts. At least four of these small apartment districts are located in the Residential A district where the Town House Dwelling District is proposed. Thus, the creation of such a district would appear to be a logical projection of the

pattern of development which is implemented by the existing zoning ordinance.

This conclusion is given additional credibility by the recent adoption of Section 29-11.1 creating a town house district. Unless the enactment of that section was a vain exercise of the legislative process, it must be assumed that the creation of such districts in the town was contemplated. It is not unreasonable to conclude that the future sites for such districts were expected to be in those areas of the town where dwellings other than single-family ones have previously been placed. To provide space for town houses in an area less restricted (e.g., Residential A) and nearer to multiple-dwelling uses clearly is more in accordance with the zoning pattern than to place such town houses in an area more restrictive (e.g.,

Residential AA) and more remote from existing multiple-dwelling uses. In short, the proposed amendment seems clearly in accordance with the comprehensive plan, as that plan is reflected in the zoning ordinances and map of the Town of Penfield.

Additional support for the conclusion that the proposed creation of a Town House Dwelling District is provided by the nature of Section 29-11.1 and the manner of its adoption. The section is carefully constructed to insure a desired kind and quality of town house development, and to protect adjacent landowners. It limits density, imposes area requirements, limits height, regulates the size and conformation of units, imposes parking requirements and restricts lot coverage. In addition, it mandates site plan review, requiring at least 19 specific inclusions in the

plan submitted for approval. Finally, when the section was adopted, no geographic location of districts was accomplished. This was left to subsequent legislative judgment. All of these factors lead to the conclusion that Section 29-11.1 created what has become known in New York as a "floating zone." The enactment of such legislation, and the subsequent geographical placement of zones similar to the Town House Dwelling District, have been consistently approved by the New York courts. The contention that such districts are created through spot zoning has been rejected in relation to districts as small as ten acres. [Rodgers v. Tarrytown, supra.] In the cited case, the Court of Appeals upheld the creation of a garden apartment district located

in what had previously been a single-family residential zone. The court discovered a relationship to the comprehensive plan in standards for development analogous to those found in Section 29-11.1. Both ordinances created a district without placing it; both contained restrictions designed to protect surrounding property; and both required intensive site plan review by a planning board.

Perhaps the only argument of a plausible nature which tends to support a charge of spot zoning is the size of the proposed district. Where the spot zoning argument has been successful, the area involved has been a single lot or a very small parcel of land. Rarely has a court discovered spot zoning in amendments affecting more than ten acres of

land. Even in these instances, the courts have been emphatic in their insistence that a zoning amendment may not be denominated spot zoning simply because it applies to a relatively small parcel of land. [The New York cases are collected in Anderson, Zoning Law and Practice in New York State, § 5.04.] The relevant inquiry is not the size of the area but "whether the zoning was accomplished for the benefit of the individual owner, rather than pursuant to a comprehensive plan for the general welfare of the community." [Greenberg v. New Rochelle, 206 Misc 28, 129 NYS2d 691 (1954), affd 308 NY 736, 124 NE2d 716.] Indeed, where a rational purpose was apparent to the court, amendments which reclassified single lots have been sustained. [Scannell v. Dunkirk, 9 AD2d 725, 192 NYS2d 192 (1959).]

Where spot zoning is urged, the courts commonly have inquired concerning the probable impact on surrounding land. Town houses located on the site here in issue would appear to have little impact upon adjacent land. The school to the north would be unaffected. Land to the west is buffered by the topographical features mentioned above. Property to the south is already developed by the construction of apartments. Single-family homes to the east are already near a multiple-family development, and their interest is protected by the standards and site plan review provided in the ordinance.

If some minimal impact upon surrounding land can be demonstrated, this must be balanced against the benefits to be derived from the town house development. It is my understanding that the Town of Penfield is in need of the kind of middle-

income housing which will be provided by the planned development and that the need is local rather than simply a problem of overflow from the urban center. Where such a public need motivates a zoning amendment, the courts are most reluctant to discover spot zoning. Particularly is this true where the amendment is not sought to enrich a developer but is requested by a nonprofit organization seeking to achieve a community benefit. [Relevant cases are collected in Anderson, American Law of Zoning, § 5.06.]

Finally, any remaining likelihood that the proposed amendment would be disapproved as spot zoning appears to be removed by the careful planning which has preceded the selection of the site. The Foundation for Cooperative Housing Services has examined the site and found

it suitable in all respects. The architect has viewed it and reached the same conclusion. The executive head of the county planning department has concurred. If the planning board of the Town of Penfield and the legislative authority of the town should reach the same conclusion and approve the reclassification of this land, it is difficult to imagine that a court would conclude that the zoning amendment was not in accordance with a comprehensive plan. [See generally, Point Lookout Civic Association v. Hempstead, 22 Misc 2d 757, 200 NYS2d 925 (1960), affd 12 AD2d 505, 207 NYS2d 121, affd 9 NY2d 961, 217 NYS2d 227, 176 NE2d 203; Twenty-one White Plains Corp. v. Hastings-in-Hudson, 14 Misc 2d 800, 180 NYS 2d 13 (1958), affd 9 AD2d 934, 196 NYS 2d 562.]

Respectfully submitted,

EXHIBIT R

Robert M. Anderson

RMA:nm

EXHIBIT S

PENFIELD PLANNING BOARD

Tuesday, September 9, 1969

RESOLVED, that the application of the Penfield Better Homes Corporation, 1849 Blossom Road, Rochester, New York for a recommendation from the Penfield Planning Board to the Penfield Town Board for the rezoning of approximately 15 acres of land from Residential A to the Town House Dwelling District, said land located at the south end of Highland Drive at the northwest intersection of Gebhardt and Highland Drive, be and the same hereby is DENIED for the following reasons:

1. Town House construction would constitute an inappropriate use of this land and would not be consonant with existing character of the neighborhood;

2. Subject use would create traffic problems within the area; and

3. the proposed plan violates setback recommendations as set forth in the report and map of the Department of the United States Agriculture Soil Conservation Service, dated December 15, 1969, and would cause serious erosion problems during and after construction.

AND AT IS FURTHER RESOLVED, that not withstanding, the above denial of the subject application for the use of this site, the Board recognizes the need for a project of this nature in Penfield.

s/s J.B.Jones

Penfield, New York January 12, 1970

RESOLUTION DENYING AN APPLICATION FOR A PUBLIC HEARING TO CONSIDER A REZONING

WHEREAS, Penfield Better Homes Corp. has heretofore made application to the Planning Board for a recommendation to rezone from Residential "A" to the Town House Dwelling District approximately fifteen (15) acres of land located at the south end of Highland Drive at the north-west intersection of Gebhardt and Highland Drive; and

WHEREAS, the Planning Board has denied said application; and

WHEREAS, Penfield Better Homes Corp. has now petitioned this Board to call a public hearing to consider the request for such rezoning;

NOW, THEREFORE, BE IT RESOLVED that this petition be denied for the following reasons:

1. The Planning Board, under its rules, has on two separate occasions, conducted public hearings on the application and have given to all those who wished to be heard an unlimited opportunity to present evidence and to express their views on the merits of the proposed rezoning. These public hearings were held on adequate notice and were attended by a large number of interested persons.

EXHIBIT T

2. The report of the Planning Board includes reasons for its recommendation which are sufficient and consistent with good planning; and

BE IT FURTHER RESOLVED that this Board also recognizes the need for moderate income housing in the Town of Penfield and will consider the necessary legislation to accomplish it in an appropriate location or locations.

EXHIBIT U

O'BRIEN HOMES INC. APPLICATION

TO THE PENFIELD PLANNING BOARD

AT AN ADVERTISED HEARING HELD

SEPTEMBER 27, 1971

EXHIBIT U

TABLE OF CONTENTS

I	PLANNED UTILIZATION
II	FINANCIAL FACTORS
III	PROJECTED BUYER PROFILE
IV	COMPARISON OF EFFECTIVE DENSITY FACTORS
V	COMPARISON OF REVENUES TO THE TOWN OF PENFIELD
VI	COMPARISON OF SERVICE REQUIREMENTS FROM THE TOWN OF PENFIELD
VII	SUMMARY

EXHIBIT U

I APPLICATION - Part One:

For approval by the Penfield Planning Board for the re-zoning of 17.1 acres in Penfield from AA to Apartment Zoning of approximately 12 Units per acre.

II REASONS:

1) Good planning relative to compatibility of use

2) Is in line with Penfield Master Plan

3) Highest and best use of land

RELATED INFORMATION

I Planned Utilization

A) At the January 14, 1969 meeting of the Penfield Planning Board, O'Brien Homes offered to set aside at least seven acres of land adjoining their proposed townhouse development, to be used for low to moderate income housing. This offer followed a recommendation of the Monroe County Planning Council and the offer was commended by the Penfield Planning Board and the Town Board.

At that meeting, O'Briens stated that they were not in a position to develop rental property, and that they could

not promise whether they would be able to develop low to moderate income housing for sale on the offered site, or whether it would be done by someone else.

O'Briens are now in a position to develop this low to moderate income housing for sale at this location.

B) Basic Development Facts:

1. A condominium development of Apartment Homes, including a Homeowners Association to guarantee exterior maintenance.

2. Less than 1,500 feet of dedicated roads, the remainder are private drives.

3. 51 four-family buildings, with a garage for each family as an integral part of the building. (204 units)

4. Colonial style architecture, compatible with the area

5. Complete sodding and landscaping with a recreational area.

6. Unit Features - (4 Units per Building)

   (a) Two 1-story units of approximately 800 square feet each

   b) Two 2-story units of approximately 900 square feet each
   c) Private entrances
   d) Two bedrooms, one bath
   e) Range, oven and hood, garbage disposer, carpeting, formica cabinets, thermopane windows and screens, bath vanity and built-in television antenna.

II Financial Factors

As a private sector of the economy, we are unable to provide housing for people who have both low income and lack of capital necessary for downpayment. However, we can help those who have moderate income with limited funds for downpayment (usually young people) or those who have low income with accumulated funds (usually middle-aged to retired people)

A) Projected Selling Price - $17,500. to $18,000.

We have similar units available in East Rochester at $17,440. However, the Penfield units will have far more expensive exteriors and a density of 12 per acre versus 16 per acre in East Rochester.

B) Minimum Down Payment - 10%

1. Moderate income group with no funds for higher down payment - a 10% down payment requires

a yearly income of between $8,500-$9,000. to qualify for a mortgage.

2. Low income group with accumulated funds for higher down payment - an $8,000. down payment would require an income of between $7,000 to $7,500 to qualify for a mortgage.

III Projected Buyer Profile

Our projections for occupancy per unit indicate the following:

Adults	1.73	
Children	0.17	*
Total	1.9	Per unit

*A total of 17 children for 100 units - (See Appendix A)

IV Comparison of Effective Density Factors *

Item	Windsor Square Phase One Town Houses	Brookhill Garden Apartments	Windsor Square Apartment Homes
People/Acres	26.1	22.8	22.8
Land Coverage			
Dedicated Road	3.1%	0.0%	1.8%
Private Drive/ Parking	18.7%	21.4%	15.8%
Buildings	23.8%	12.8%	17.2%
Green Area	54.3%	65.8%	65.4%

* For further analysis - see Appendix II

V. Comparison of Revenues to the Town of Penfield *

Description	Apartment Homes	Single Detached
Market Value of Taxable Property Per Acre	$216,000. Per Acre (12 Units x $18,000)	$70,000. Per Acre (2 Units x $35,000.)
Market Value of Taxable Property Per Child	$108.000. Per Child (.17 Children/Unit or (2 children/acre)	$23,333. Per Child 1 1/2 Children/Unit) or (3 children/acre)

* See Appendix I

VI. Comparison of Service Requirements from the Town of Penfield

This project has less than 1,500 feet of dedicated roads versus a minimum of 8,000 feet for 200 single detached units on 80 foot lots.

VII. Summary

This project will offer single people and small families of low to moderate income the opportunity to enjoy the advantages of home ownership.

Although theoretically the Town will be granting these family owners the same density standards as apartment dwellers, in reality this development will have both less building coverage and less people density than Townhouses at 9 units per acre.

In addition, these units will pay far more for Town services received and far more towards the education of their children than single family units.

Approving the necessary zoning to make this project financially feasible will demonstrate that the Town of Penfield is sincere in its desire to develop low to moderate income housing when such projects are mutually beneficial to the new home owners and to the present citizens of the township.

895

EXHIBIT U

PROJ. NO. 892.05

DATE September 10, 1971

SEAR • BROWN
Schoenberger • Costich • Maletta
Civil Engineers and land planners
85 Metro Park, Rochester, New York 14623

MEMORANDUM

COMPARATIVE ANALYSIS

	Windsor Square I (Townhouses)	Brookhill (Garden Apts.)	Linden East Apt. Homes)	Windsor Square V (Apt. Homes)
Project Area(Ac)*	15.9	18.2	14.3	17.1
Dwelling Units (DU)	136	192	200	204
Density: DU/Ac	8.6	10.5	16	12.0
People/Acre	24.9	22.8	30.4	22.8

894

EXHIBIT U

APPENDIX I

	Projected on Average of 10,000 Homeowner Apartments in Western States	Actual on First 51 Active Prospects in Linden East East Rochester
Adults Per Unit	1.73	1.6
Children Per Unit	0.17	0.16
TOTAL	1.9	1.7

EXHIBIT U

	Windsor Square I (Townhouses)	Brookhill (Garden Apts.)	Linden East Apt. Homes)	Windsor Square V (Apt. Homes)
Land Coverage**				
Dedicated Road	3.1%	0.0%		1.8%
Private Drive/ Parking	18.7%	9.8%	9.0%	15.8%
Buildings	23.8%	9.8%		17.2%
TOTAL	45.7%	34.2%	39.2%	34.6%
Green Area ***	54.3%	65.8%	60.8%	65.4%
Guest Parking	136=8.6Ac	Unknown	7=0.5/Ac	78=4.5/Ac

* Measured to centerline of dedicated road.
** Includes buildings, private drives, parking areas.
Does not include sidewalks, pool and clubhouse.
*** Green Area equals 100% minus percentage of land coverage.

EXHIBIT V

PENFIELD PLANNING BOARD
October 12, 1971-Page 2.

Houses consisting of 32 Town Houses for sale to be located on the east side of Panorama Trail and south of the Mt. Read subdivision in accordance with a resolution of the Board dated 12-8-70 and reapproved 6-2 -71, be and the same hereby is reapproved, subject to the same conditions previously stated.

VOTE OF THE BOARD

George Shaw, "AYE"
James Hartman, "AYE"
John D. Williams, "AYE"

Upon the motion, all of the Board Members present having voted "AYE, the resolution was declared adopted.

TABLED MATTERS

Item # 1. The application of O'Brien Planned Communities, Inc. 6780 Pittsford-Palmyra Rd., Fairport, N.Y. 14450 for a recommendation from the Planning Board to the Town Board for the rezoning of 10.7 plus acres of land on the south side of Penfield Rd. from Residential "AA" to Commercial Zone and from Residential "AA" to Apartment or Multiple Dwelling District, 17.1 plus acres located directly south of the above parcel. Both parcels located between Wegman's Shopping Center and Stanndco's proposed Planned Unit Development and north of the existing O'Brien Town House project.

EXHIBIT V

Mr. Donald Summers, an attorney, appeared in behalf of this application. He briefly reviewed with the Board what had been presented at the previous meeting and stated that he was here this evening to ask if the Board had any questions and to ask for prompt action in behalf of his client.

A general discussion then took place between members of the Board and the applicant concerning the overall proposal.

No one else wished to be heard on this matter and a motion was made by James Hartman and seconded by John Williams that the following resolution be adopted:

RESOLVED, that the application of O'Brien Planned Communities, Inc. 6780 Pittsford-Palmyra Rd, Fairport, N.Y. 14450, for a recommendation from the Planning Board to the Town Board for the rezoning of 10.7 plus acres of land on the south side of Penfield Rd. from Residential "AA" to Commercial Zone and for the rezoning from Residential "AA" to Apartment House or Multiple Dwelling District 17.1 plus acres located directly south of the above parcel; both parcels located between Wegman's Shopping Center and Stanndco's proposed Planned Unit Development and north of the existing O'Brien Town House project, be and the same hereby is DENIED.

VOTE OF THE BOARD

EXHIBIT V

George Shaw, "AYE" John D. Williams, "AYE"
James Hartman, "AYE

EXHIBIT W

to the approval of the Monroe County Health Department as to the proposed holding tank sanitary sewer system.

VOTE OF THE BOARD

George Shaw, "AYE" Timothy Westbrook, "AYE" James Hartman, "AYE" John D. Williams,"AYE"

Upon the motion, all of the Board Members present having voted "AYE", the resolution was declared adopted.

ITEM #2. The application of Feno Pecora 33 Woodhaven Drive, Rochester, N.Y. 14625 for a recommendation for the Planning Board to the Town Board under section 24-3(e) of the Penfield Zoning Ordinance for a permit for top soil removal and excavation on 37 acres of land located on the south side of Empire Blvd. on Wilbur Tract Road, Account #435-000 and 870-500.

This application has been postponed to April 10th. at the request of the applicant.

MISCELLANEOUS MATTERS

ITEM # 1. The application of James R. Liberty, O'Brien Planned Communities Inc., 6780 Pittsford-Palmyra Rd., Fairport, New York, 14450 for the purpose of discussing

EXHIBIT W

with the Board a possible recommendation to the Town Board to rezone 27 acres from Residential "AA" to apartments and multiple dwellings and limited commercial. The property is south of Penfield Rd. and west of the Wegman property; east of the proposed Willow Pond PUD and north of O'Brien Planned Communities, Account #62-000.

James Liberty and Robert Schoenberger appeared on behalf of the application. They informed the Board that they proposed a density of 12+ units per acre in a quadruplex configuration. A day care center was proposed in the approximately 1 acre and a commercial zoning was proposed for that one acre. The Day Care Center to be operated by Gerber Products. Liberty said that in his opinion the proposed structures were apartments and not Town Houses. The sales price would be below $20,000, and would be suitable for individuals earning $ 8500. per year and above. David O'Brien stated a similar in East Rochester produced 17 children per 100 units. Eleanor Turner of Perinton asked whether the East Rochester project had been pre-sold. She also inquired about the proposed Day Care Center.

After the discussion, Mr. Timothy Westbrook made a motion and Mr. James Hartman seconded that the matter be tabled.

EXHIBIT W

VOTE OF THE BOARD

George Shaw, "AYE"
James Hartman, "AYE"
Timothy Westbrook, "AYE"
John D. Williams, "AYE"

PENFIELD PLANNING BOARD
Monday, April 24, 1972

The regular meeting of the Penfield Planning Board was held att he Penfield Town Hall on Monday, April 24, 1972 at 8:00 P.M. E.S.T.

BOARD MEMBERS PRESENT

George Shaw, Chairman John D. Williams
Timothy Westbrook Richard C. Ade

BOARD MEMBERS ABSENT

James Hartman

ALSO PRESENT

Samuel Dattilo Attorney for the Board
Robert H. Fuller, Director of Public Works and Clerk of the Board
James Hain, Building Inspector
David Dinse, Ass't. Building Inspector

The Clerk was directed by the Chairman to read the agenda

EXHIBIT W

ADVERTISED HEARINGS

ITEM # 1. The application of O'Brien Planned Communities, Inc. 6780 Pittsford-Palmyra Rd., Fairport, N.Y. 14450, to obtain recommendation from the Planning Board to the Town Board to rezone twenty-seven (27) acres of land from Residential "AA" to Apartments and Multiple Dwellings and Commerical. The property is south of Penfield Rd. and west of the Wegman property; east of the proposed Willow Pond Pud and north of the O'Brien Planned Communities, account #62-000.

Mr. David O'Brien appeared on behalf of the application. Mr. O'Brien stated that the present plan showed a decrease of commercial area and an increase of dwelling units from plans relating to the same project which the Board had seen in the past. Mr. O'Brien thought the present zoning was confiscatory; that his plan was compatible with the zoning of adjoining areas; and that the proposed development would serve the needs of the regional community.

Mr. Earl De Rienzo, architect, described the surrounding zoning, stating the area was surrounded by commercial or attached residential. He also stated that 1 to 2 acres of the site would be required for a day care center.

Robert Schoenberger, engineer, stated that few grading problems existed on site and that the required utilities would be

available on site or were immediately adjacent.

Nelson Carpenter described the proposed Quadruplex units as being four family units per building; the form of ownership as being condominium; each unit would have two bedrooms, one bath, one garage; there would be no outside stairwells. The units would be either 800 or 900 square ft. Mr. Carpenter stated that experience with a similar project in East Rochester indicated that half of the buyers would be single persons. The number of children would be relatively low.

Mr. Carpenter offered some statistics relating the nearby Windsor Square Townhouse development and the East Rochester Quadruplex development which indicated that the Quadruplex development produced fewer people per acre and more green area; (see verbatim). The same body of statistics indicated a taxable valuation per child of $43,000.00 from townhouses and $88,000.00 for quadruplexes, (see verbatim).

Mr. Carpenter said a Homeowners Association would assure that the property would be well maintained.

As to price per unit, Mr. Carpenter said a recent increase of 36% in the price of lumber would require the units to be sold for between $18 to $20 thousand.

On the question of the condominium form of ownership, the owner owns the inside of the unit and a common share of all other areas including garages, Mr. Carpenter said.

Mrs. Elizabeth Brennan said she could not accept the statement that the proposed zoning was the best use of the land; that she objected to rezoning this close to an elementary school. Mrs. Brennan inquired as to the transfer of ownership.
Mr. Carpenter replied that the buyer received a warranty deed; that 90% loans were avaiable; also that the units could be rented or sold.

There then ensued a colloquy between Mrs. Brennan and Mr. Carpenter concerning value systems, government subsidies, busing and other topic, (see verbatim).

Mrs. Barbara Rubin stated she would not want a child to cross a four lane highway.

Mr. John Brickmore said he wished to compliment the applicant for meeting a crying need. He thought the proposal looked like a good plan and was the type of housing we need.

Mrs. Brennan said she thought a footbridge could be constructed over the four lane highway

EXHIBIT W

No one else wished to be heard on this matter and a motion was made by John D. Williams and seconded by Richard C. Ade that the matter be tabled.

VOTE OF THE BOARD

George Shaw, "AYE" John D. Williams, "AYE"
Timothy Westbrook, "AYE" Richard C. Ade, "AYE"

Upon the motion, all of the Board Members present having voted "AYE, the matter was tabled.

ITEM # 2. The application of Albert Balistiere, 215 Inwood Drive, Rochester, N.Y. for a resubdivision of two lots, known as lots 3 and 4 or Panorama Ridge Subdivision located on the west side of Panorama Trail opposite Hickory Ridge Rd., account #250-630 and 250-640.

Mr. Albert Balestiere appeared on behalf of the application. Mr. Belestiere stated his application sought to relocate the east lot line of lot 4 (of an existing subdivision) 18.5'. He said he needed the additional width to accommodate a garage and drive he proposed to build. He said that the previous owner had misunderstood where the lot line was. Mr. Balestiere said the additional footage had been conveyed to him and that he would furnish a contract to establish ownership.

EXHIBIT W

No one else wished to be heard on this application and a motion was made by John D. Williams and seconded by Timothy Westbrook that the following resolution be adopted:

RESOLVED, that the application of Albert Balestiere, 215 Inwood Drive, Rochester, N.Y. for a resubdivision of two lots, known as lots 3 and 4 of Panorama Ridge Subdivision located on the west side of Panorama Trail opposite Hickory Ridge Rd., account #250-630 and 250-640 be, and the same hereby is APPROVED, subject to the submitting contract showing consent of present owner.

VOTE OF THE BOARD

George Shaw, "AYE"
Timothy Westbrook, "AYE"
John D. Williams,
Richard C. Ade, "AYE"

Upon the motion, all of the Board Members having voted "AYE, the resolution was declared adopted.

ITEM # 3. The application of Gladstone V. Gayle, 1355 Genesee St., Rochester N.Y., 14611, for the purpose of obtaining an extension to the approval granted by the Planning Board on January 10, 1972 of a one lot subdivision known as Gayle Subdivision located on the south side of Embury Rd. approximately 844' east of Creek St.

** ** ** ** ** ** ** ** ** **

EXHIBIT X OMITTED HERE

CONTENTS HAVING APPEARED

AS PART OF EXHIBIT W

** ** ** ** ** ** ** ** ** ** ** **

EXHIBIT Y

PENFIELD TOWN BOARD

PENFIELD, NEW YORK SEPTEMBER 7, 1971

RESOLUTION FOR REZONING

WHEREAS RICHARD HANDLER AND FRANK GROSSO, Architects, Engineers and Planners, 77 Ridgeland Road, Rochester, New York on behalf of the owners have made application for the rezoning of a parcel of land hereinafter described from "Residential AA" District to "Planned Unit Development" District, and,

WHEREAS the Planning Board has reviewed the proposal for the Planned Unit Development and has rendered a favorable report to the Town Board with the proviso that the applicant reduce the density from that proposed, and,

WHEREAS the Monroe County Planning

EXHIBIT Y

Council has considered the proposal for a Planned Unit Development on the premises hereinafter described and has recommended approval, and,

WHEREAS a public hearing was duly called and held on August 2, 1971, at 8:00 P.M. at the Town Hall, Penfield, New York, to consider the application for rezoning, and,

WHEREAS it appears that the proposed Planned Unit Development for the premises hereinafter described falls within the intent and objectives of the Planned Unit District Ordinance of the Town as amended, and would be in the best interest of the Town,

NOW THEREFORE, BE IT ORDAINED, by the Town Board of the Town of Penfield that the Zoning Ordinance and the official

EXHIBIT Y

Zoning Map of the said Town be and the same hereby is amended as follows:

SECTION 1. The official Zoning Map of the Town of Penfield is amended to transfer from "Residential AA" District to "Planned Unit Development" District the following described premises:

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Penfield, County of Monroe and State of New York, being a portion of Lot No. 40 in Township No. 13 in the Fourth Range of Townships of the Phelps and Gorham Purchase comprised of the following conveyances:

Walter J. Holloran to Dolomite Products Company, Inc., dated July 31st, 1968 and recorded in Monroe County Clerks Office in Liber 3920 of Deeds, at Page 343.

Whalen Estates, Inc., to Dolomite Products Company, Inc., dated January 30th 1970 and recorded in Monroe County Clerks Office in Liber 4037 of Deeds, at Page 90.

Victor L. Schroven and Marian V. Schroven to Dolomite Products Company Inc., dated July 18th, 1970 and recorded in Monroe County Clerks Office in Liber 4065 of Deeds, at Page 599.

Rudolph R. Ostrowski and Pearl E. Ostrowski to Dolomite Products Company, Inc.,

EXHIBIT Y

dated August 18th, 1970 and recorded in Monroe County Clerks Office in Liber 4072 of Deeds, at Page 124.

EGH CORP. to Dolomite Products Company, Inc., dated January 15th 1970 and recorded in Monroe County Clerks Office in Liber 4037 of Deeds, at Page 235.

The premises described in the above mentioned conveyance are more particularly described as follows: ALL THAT TRACT OR PARCEL OF LAND, situate in part of Lot 40, Township 13, Range 4, Town of Penfield, County of Monroe and State of New York; Beginning at a point on the easterly boundary of Five Mile Line Road the northwest division of Lot 40 where it is intersected by the north line of premises conveyed to the grantors herein by deed of Walter J. Holloran recorded in Liber 3920 of Deeds, at Page 343; thence (1) easterly along said north line to a point at its intersection with the easterly line of said premises; thence (2) southerly along said line to the northwest corner of premises conveyed to the grantors herein by deed of Rudolph R. Ostrowski and wife recorded in Liber 4072 of Deeds, at Page 124; thence (3) easterly along the north line of the premises conveyed by the aforesaid deed to a point where said line is intersected by a line running due north and south so as to include within the premises conveyed to the grantors by the aforesaid deed a total of exactly five (5) acres of land; thence (4) southerly along said north-south line to a point at its inter-

EXHIBIT Y

section with the northerly line of premises conveyed to the grantors herein by deed of Victor L. Schroven and wife recorded in Liber 4065 of Deeds, at Page 599; thence (5) easterly along the north line of said premises to a point at its intersection with the westerly boundary of Baird Road; thence (6) southerly along said boundary a distance of 1355.07± feet to a point at its intersection with the southerly line of premises conveyed to the grantors herein by deed of EGH CORP. recorded in Liber 4037 of Deeds, at Page 235; thence (7) westerly along said line making an interior angle of 90° 25' 22" with the last mentioned course, a distance of 1524.96± feet to an iron pin at the southwest corner of said premises, said iron pin also being the northeast corner of premises conveyed to the grantor herein by deed of Whalen Estates, Inc., recorded in Liber 4037 of Deeds, at Page 90; thence (8) southerly along the east line of said premises, a distance of 1325.27± feet to a point at its intersection with the northerly boundary of Whalen Road; thence (9) westerly, at right angles to the last mentioned course, along said boundary a distance of 1259.14± feet to a point at its intersection with the westerly line of said premises; thence (10) northerly along said line, making an interior angle of 90° 40' 30" with the last mentioned course, a distance of 1323.14± feet to a point six-tenths (0.6) feet north of a corner post according to a survey and shown on a Map of Property to be conveyed by Grace C. Warner prepared by Erdman and Anthony, Consulting Engineer's, dated August 17, 1965, said point being in the southerly

line of premises conveyed to the grantors herein by deed of Walter J. Holloran as aforesaid; thence (11) westerly along said line to a point at its intersection with the beforementioned easterly boundary of Five Mile Line Road; thence (12) northerly along said boundary to the place of beginning, comprising a total area of 163.7± across; together with all of the right, title and interest of the grantors herein to Whalen Road, Five Mile Line Road and Baird Road.

HEREBY CONVEYING and intending to convey all of the grantors interest in the above described property.

EXCEPTING AND RESERVING from the above described premises, ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Penfield, County of Monroe, New York, known as Township 13, Range 4, Town Lot No. 40, being more particularly described as follows: Beginning at a point in the northerly boundary of Whalen Road which point is 350.17 feet easterly of the southwesterly corner of the aforesaid premises conveyed to Whalen Estates, Inc., by deed recorded in Liber 3670 of Deeds at Page 216 and which point is also approximately 757.6 feet easterly of the center line of Five Mile Line Road; thence (1) northerly along a line making an angle of 90° 00' 00" with Whalen Road, a distance of 204.00 feet to a point; thence (2) westerly along a line making an interior angle of 90° 00' 00" with the preceding course, a distance of 145.18 feet to a point on a curve; thence (3) southwesterly and southerly along a curve having a radius of 570.00 feet, so

situated that a radial line to the aforesaid point makes an angle of 7° 27' 20" in the southeast quadrant with the preceding course, a distance of 74.17 feet to a point of tangency; thence (4) southerly along a line parallel to course No.1, a distance of 90.04 feet to a point of curvature; thence (5) southeasterly along a curve having a radius of 40.00 feet, a distance of 62.83 feet to a point of tangency in the northerly boundary of Whalen Road; thence (6) easterly along the northerly boundary of Whalen Road, a distance of 110.00 feet to the point of beginning comprising 0.6974 acres.

BEING AND HEREBY INTENDING to convey a part of those premises conveyed to the grantor herein by Executor's Deed from Donald Williams, Executor of the Estate of Gra e C. Warner, deceased, dated September 1, 1965 and recorded in the Monroe County Clerk's office on September 2, 1965 in Liber 3670 of Deeds at Page 216.

ALSO EXCEPTING THEREFROM, the premises conveyed by Carl Bernhard to John J. Lorson, Jr., and Peter Scorza by deed recorded in Monroe County Clerk's Office July 14, 1959, in Liber 3220 of Deeds at page 453.

ALSO EXCEPTING the following described premises: Beginning at a point in the center line of Baird Road, which point is situate 537.52 feet along said center line southerly from the northeast corner of the premises first above described; thence (1) running westerly on an included angle of 89° 44' formed with the center line of Baird Road a distance of 224.75 feet to an

iron pin; thence (2) running southerly on an included angle of 90° 16' formed with course No. 1 a distance of 180 feet to a point; thence (3) running easterly on an included angle of 89° 44' formed with course No. 2 a distance of 224.75 feet to the center line of the said Baird Road; thence (4) running northerly along the center line of said road a distance of 180 feet to the point or place of beginning.

-5-

ALSO EXCEPTING the following described premises: Beginning at a point in the center line of Baird Road, which point is situate 976.35 feet southerly along the said line from the northeast corner of the premises conveyed by Joseph R. Vasile and Horace P. Gioia to Russell Welkley by deed recorded in the Monroe County Clerk's Office on January 15, 1969, in Liber 3958 of Deeds at page 118, said point also being the southeast corner of said premises; thence (1) westerly on an included angle of 90° 25' 22" formed with the center line of Baird Road, a distance of 224 feet to a point; thence (2) running northerly on an included angle of 89° 34' 38" formed with Course No. 1 a distance of 158 feet to a point; thence (3) running easterly on an included angle of 90° 25' 22" formed with Course No. 2, a distance of 224 feet to a point in the center line of Baird Road; thence (4) running southerly along the center line of said road a distance of 158 feet to the point or place of beginning.

Intending to convey a portion of the premises conveyed by deed recorded in Monroe

County Clerk's Office on March 26, 1945, in Liber 2237 of Deeds at page 11.

THIS CONVEYANCE IS MADE AND ACCEPTED subject to convenants, easements, and restrictions of record affecting the above described premises, if any.

SECTION 2. This amendment is conditioned upon the following:

a) The modification of the plan for the Planned Unit Development to conform to the density limitations contained in the Planned Unit Development Ordinance, as amended.

b) The execution of an agreement between the developer and the TOWN OF PENFIELD which defines (1) the responsibilities of the developer, the owners and occupants of the developed lands, and the TOWN OF PENFIELD in the improvement, operation and maintenance of common properties and facilities including private streets, drives, service and parking areas

and recreation and open-space areas, and (2) the guarantee by which performance will be insured.

c) Payment of a sanitary sewer entrance fee for each unit in an amount to be determined by the Town Board and which will reflect the development at a greater density of PUD than the average density of a residential development and which will also reflect the need for additional sewerage capacity before the approval of the site plan for development of the planned fourth stage.

d) The filing of a satisfactory letter of credit in an amount sufficient to cover the estimated costs as determined by the Town Engineer of roads, gutters, sidewalks, sewers and sewer systems, drains and drainage systems, lighting systems, water systems, landscaping, and sewer entrance fees.

e) The securing of a site plan approval in accordance with all provisions of the Zoning Ordinance with respect to a Planned Unit Development District and the execution of any agreements between the developer and the TOWN OF PENFIELD required by the Planning Board to insure the construction of the development according to the site plan and in the chronological order of planned construction.

SECTION 3. This amendment shall take effect immediately upon posting and publishing as required by law.

/s/ Earl Rapp
TOWN CLERK OF PENFIELD,
N.Y.

EXHIBIT Z

LEGAL NOTICE

NOTICE OF PUBLIC HEARING, PENFIELD PLANNING BOARD

PLEASE TAKE NOTICE, That a Public Hearing will be held at the Penfield Town Hall on Monday, June 12, 1972, at 8:00 P.M., Eastern Daylight Time by the Penfield Planning Board to consider the following matters:

#1 The application of Oscar DeBree, 1200 Penfield Road, Rochester, N.Y. 14625, for a recommendation to the Town Board for Top Soil Removal Permit, under Sec. 24-3 of the Code of the Town of Penfield. The proposed top soil side of Five Mile Line Road approximately 3200' north of Plank Road, A/C #753-000.

#2 The application of Standco Developers Inc., 40 Wildbriar Road, Rochester, N.Y. under 29-11.23 F of the Code of the Town of Penfield, for final approval of detailed site plans for a proposed Planned Unit Development on the properties owned by Penfield Estates Inc. The proposed Planned Unit Development to be located on 103.49 acres at, or near, 2041 Penfield Road, A/C #63-100.

A Public Hearing will be held at the Penfield Town Hall on Monday, June 12, 1972 at 8:00 P.M. Eastern Daylight Time, at which time all persons in favor or opposed to said applications will be heard.

Earl Rapp
Town Clerk

Penfield Press

BEST COPY AVAILABLE

EXHIBIT AA

PENFIELD PLANNING BOARD
March 13, 1972-Page 2.

VOTE OF THE BOARD

George Shaw, "AYE"
James Hartman, "AYE"
John D. Williams, "AYE"

Upon the motion, all of the Board Members present, having voted "AYE", the resolution was declared adopted.

ITEM # 3. The application of Zurick Development Corp. (Phillip Prinzi), 2255 Lyell Ave., Rochester, N.Y. 14606 for a recommendation from the Planning Board to the Town Board for the rezoning of Sections 3 and 4 of the Independence Ridge Subdivision, Account #922-000 from Residential "AA" to Residential "A".

Samuel Santandria appeared on behalf of the application. He stated that the developers intention was not to change the lot size from the required by Residential "AA" Zoning but to build a smaller house. The lots would be sold to Domus Homes who would build the houses. William Wackerman of Domus Homes identified himself as the builder of the homes in Domus East Subdivision and Baird Rd. Estates. He stated that the building of the same type of home was contemplated as had been built in these subdivisions. Wackerman offered pictures illustrative of the type of home about which he was

EXHIBIT AA

speaking, adding the comment that these were in the $25-$30 thousand dollar range. John Williams inquired as to whether these homes had "built in" expansion areas. Wackerman replied that they had not but some expandable homes might be offered if a market developed for these. Lawrence Dawson inquired as to the location of the proposed development. Wackerman replied, "in the Scribner - Embrey Rd. area." Elizabeth Brennan asked if the homes would have basements; the answer was, "Yes".

No one else wished to be heard on this matter and a motion was made by John D. Williams and seconded by George Shaw that the following resolution be adopted:

RESOLVED, that the application of Zurick Development Corp., (Phillip Prinzi), 2255 Lyell Ave., Rochester, N.Y. 14606 for a recommendation from the Planning Board to the Town Board for the rezoning of Sections 3 and 4 of Independence Ridge Subdivision, Account #922-000 from Residential "AA" to Residential "A" be, and the same hereby is DENIED, not withstanding the Board's interest in the concept but upon the grounds that sewer capacity is unavailable at present.

VOTE OF THE BOARD

George Shaw, "AYE" John D. Williams, "AYE"
James Hartman, "AYE

EXHIBIT AA

Upon the motion, all of the Board Members present having voted "AYE", the resolution was declared adopted.

ITEM # 3. The application of Angelo Castronova, 1766 Empire Blvd., Webster, N.Y., 14680 for an interview with the Board concerning possible resubdivision of account #824-000. Approximately 30 ft. by 92 ft. of this account to be added to account #882-845 for the purpose of an addition to present building at 1766 Empire Blvd.

Angelo Castronova appeared for the application. He stated the proposed addition would comply with all set back requirements; the addition would be 30 ft. by 50 ft.; the total area of the building would be 50 ft. by 100 ft.; there would be no additional water used in the building.

No one appeared in opposition to this application and a motion was made by John D. Williams and seconded by James Hartman that a letter by sent to the applicant advising him that the Board viewed this application with favor.

VOTE OF THE BOARD

George Shaw, "AYE" John D. Williams, "AYE"
James Hartman, "AYE"

Upon the motion, all of the Board Members present having voted "AYE", the Clerk

EXHIBIT AA

was so directed.

ITEM # 4. The application of Angelo Castronova, 1766 Empire Blvd., Webster, N.Y. 14580 for an interview to obtain the Board's view on a possible rezoning of two (2) acres of land on the west side of Creek St., account #824-000 from Commercial to Apartment House and Multiple Dwelling.

Angelo Castronova appeared on behalf of the application. (See verbatim).

Mr. Shaw asked about density; Mr. Castronova said he would cooperate; Elizabeth Brennan said she was glad to see a trend from Commercial to dwelling units; she said that she would like to see single homes. Castronova th townhouses might be possible.

No one appeared in opposition to this application.

A motion was made by John D. Williams and seconded by James Hartman that a letter be forwarded to the applicant stating that the Board does not view this application with favor because of the unavailability of sanitary sewer capacity.

VOTE OF THE BOARD

George Shaw, "AYE" John D. Williams, "AYE"
James Hartman, "AYE"

The Clerk was so directed-

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Title Omitted In Printing	AFFIDAVIT
	Civil Action No. 1972-42

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

CHRISTIAN G. KLING, ALAN J. TADDIKEN and RICHARD C. FARLEY, being duly sworn according to law, depose and say:

1. CHRISTIAN G. KLING, individually alleges: I am a private citizen residing at 40 Sandringham Road, Rochester, New York 14610. I am a part time teacher at the University of Rochester Evening School, Department of Economics, and a part time teacher at St. John Fisher College,Rochester, New York. I hold a Phd. in Urban Planning

from the University of Michigan and teach urban planning, environmental planning and new community planning at the University of Rochester and urban planning and environmental planning at the St. John Fisher College. In my professional and teaching duties, I have occasion to study zoning and its effect on the development of urban plans new communities and environmental planning. In my courses, I particularly consider zoning in the context of the planned unit development concept. My approach to the topic of zoning is that zoning should foster a variety of housing types in order to meet the current needs of housing in urban communities.

2. Alan J. Taddiken, individually alleges: I am a private citizen residing at 70 Highland Pkwy., Rochester, New York.

I am a senior research analist for the Rochester Center for Governmental and Community Research, Inc. I have held this position from 1968. One of my major involvements in my work with the Center has been the development of research projects, reports and consultations concerning housing needs, urban development and land use controls in Rochester, Monroe County and the eight county regional planning area. The specific studies for which I have borne the major responsibility include Housing in Monroe County, New York (1969); Planned Communities for the Rochester Area (1969); Scattered Site Developments (Low and Moderate Income Housing) (1969); A Planned Unit Development Article for a Town Zoning Ordinance (1970); Housing in the Genesee/Finger Lakes

Region: An Interim Report (1971); Senior Citizen Housing: Survey: Preliminary Report (1971); Public Controls and Housing (1971).

3. Richard C. Farley, individually, alleges: I am a private citizen residing at 86 Arvine Heights, Rochester, New York. I am an associate urban designer for the City of Rochester. In this capacity, I have constant contact with questions of city design involving the appropriateness of structures for space and the effective utilization of space. My profession necessarily involves me in considering basic questions of zoning. My educational background is a B.A. degree in architecture. I have had three years of actual experience in this field in architectural firms both in the United States and England; I have had five years' experience in urban

design in city planning offices both in Rochester and Detroit, Michigan.

4. We submit this affidavit in support of the plaintiff's opposition in the above noted lawsuit to the motion to dismiss the complaint. As we understand it, this lawsuit alleges among other points, that the Town of Penfield, by its zoning laws and policies and practices, incidental to the zoning laws effectively excludes the building of rental and/or purchase units of housing in the Town of Penfield which are accessible in price to persons of low and moderate income.

5. In this connection, our examination of the zoning ordinance of the Town of Penfield discloses that it is virtually impossible to develop new housing in the Town of Penfield for low and moderate

income households (housing which sells for under $20,000.00 per unit or rents for under $175.00 per unit) without higher governmental intervention (for example, intervention by an agency such as the New York Urban Development Corporation which has power to overrule local zoning restrictions). The Penfield zoning ordinance[1] and allied regulations (for example, sub-division regulations) significantly reduce and even deny the opportunity to build housing for low and moderate income households without any sufficient reason relating to public health, safety, and welfare.

6. Nor does the Penfield zoning ordinance reflect any efforrs to plan comprehensively for the growth of the town-either considered by itself or as a part of the Rochester Monroe County metro-

politan community. Indeed, Penfield's current zoning controls are an obstacle to any solution to the well-documented housing shortage in the Rochester-Monroe County area.[2]

ANALYSIS OF PENFIELD ZONING ORDINANCE REQUIREMENTS

7. Similar to most zoning ordinances, the Penfield zoning ordinance largely represents a collection of arbitrary regulations intended to control the physical development of their jurisdiction. Most of the provisions of the Penfield zoning ordinance are "arbitrary" insofar as they have not been determined scientifically, but rather merely represent preference and, occasionally, customary local practices. There are few provisions within the ordinance

which can be clearly identified as having a direct bearing on public health, safety and welfare. Furthermore, even when certain provisions can be so identified, such provisions frequently go far beyond the protection of public welfare into the realm of the protection of certain special interest - economic, social class, and racial.

8. The following analysis reviews the requirements of the Penfield zoning ordinance and certain effects of these requirements on various housing types and development approaches, all of which have a potential for housing low and moderate income households - but a potential which is largely denied by the Penfield zoning ordinance.

9. The following housing types and

development approaches are reviewed: single-family detached; multi-family (including townhouses); mobile homes; and planned unit developments. This analysis primarily concerns zoning requirements which have a substantial impact on the cost of a housing unit: e.g., set-back, lot size, lot width, minimum floor area, or habitable space.

SINGLE-FAMILY DETACHED HOUSING

10. Single-family detached housing on small lots (under 10,000 square feet) with reasonable lot widths (under 50 feet), setbacks (under 40 feet), and floor area requirements (not more than 800 square feet) offers potential housing for low and moderate income households. However, the Penfield zoning ordinance has only two zones specifically permitting

single-family detached housing: Section 29-8 (Residential AA District) and Section 29-9 (Residential A District). Basically, Residential AA requires, at a minimum, 20,000 square foot lots, a lot width of 100 feet and a minimum floor area of 1,500 square feet.[3] Basically, Residential A requires, at a minimum, 15,000 square foot lots, a lot width of 100 feet and a minimum floor area of 1,300 square feet (two-story house). In both cases, 53-78 foot setbacks are required from road right-of-way.[4] These are the minimum requirements governing the development of single-family detached houses in all areas of Penfield - whether such areas receive all municipal services (e.g., water, sewers) or not. Thus, areas with public water

and sewers, which could support more moderate lot sizes and dimensions, (e.g., 7,500 square foot lots, a lot width of 40 feet, and a setback of 35 to 40 feet), offering a wider choice of housing prices typical of well designed urban settings, are mandated to be developed as if they received only rural rather than full urban services.

11. Using generally accepted rules of thumb concerning residential development/building costs, the above Penfield zoning requirements force the price of single-family detached housing far out of reach of low and moderate income households. For example, the Residential AA District requirements have the following effect on housing cost:

	Zoning Requirement	Development Cost Factor	Approximate Cost
Lot Width:	100 ft.	$63/foot	$6,300.00
Setback:	65 ft.	$15/foot	975.00
Floor area:	1,500 sq.ft	$16.80/sq. ft.	25,200.00
	(Total Cost of House)		$32,475.00

The Residential A District requirements have the following effect:

	Zoning Requirement	Development Cost Factor	Approximate Cost
Lot Width:	100 ft.	$63/foot	$ 6,300.00
Setback:	65 ft.	$15/foot	975.00
Floor Area:	1,300 sq. ft.	$16.80/sq. ft.	21,840.00
	(Total Cost of House)		$29,115.00

Obviously these residential districts do not allow a wide choice in selecting modestly priced housing. The only allowable single-family detached housing is priced out of the reach of virtually all low and moderate income households.

12. Not only are these residential zones excessively restrictive (and costly in effect on housing development) of themselves, but they govern housing development in approximately 96.5 percent of the town (93.9 percent is Residential AA and 2.6 percent is Residential A). Thus, virtually all opportunity to build housing in Penfield is restricted to building for middle to upper income households. Eighty-one percent of the residentially zoned land is vacant (this represents 98 percent of all the vacant land in the town). Thus, 98 percent of all vacant land in Penfield is unavailable for the construction of low and moderate income housing.

MULTI-FAMILY HOUSING

13. Just as the smaller lot single-family detached house offers housing

opportunities for the low and moderate income household, so too does the multi-family structure. But just as the smaller lot single-family detached house is virtually impossible to build today in Penfield, moderately priced rental units and, for that matter, rental units at any price, are also very difficult or even impossible to construct. Multi-family housing is difficult or impossible to build because the Penfield zoning ordinance has provided for only 126 acres (or 0.5 percent of the town's total acreage) where such development can occur. Furthermore, the ordinance allows a maximum density of 12 units per acre - a density far below that considered necessary in order to allow moderate rentals (i.e., a density of at least 16 to 20 per

acre is considered desirable). Other arbitrary requirements of the ordinance which unnecessarily increase the cost of this housing are the requirements of two parking spaces per apartment unit and an enclosed garage for every unit. Of available vacant land, only 64 acres or 0.3 percent is zoned for multi-family housing.

14. In terms of townhouses, another housing type offering potential opportunity for low and moderate income households, the Penfield zoning ordinance requires a minimum of 1,200 square feet of floor area per unit. Such high minimum floor area requirements in combination with density requirements (of nine units per acre) have a significant impact on unnecessarily increasing housing costs and

diminishing housing opportunities.

MOBILE HOMES

15. Mobile homes offer a significant potential for providing high quality, low cost housing for low, moderate, and even higher income households. Typically, mobile homes occur on either individual lots or in so-called mobile home parks. The Penfield zoning ordinance excludes mobile homes from individual lots (outside of mobile home parks). While the Penfield zoning ordinance provides for mobile home parks, only 118 acres are so zoned, and of those, only 33 are still vacant (or 0.1 percent of the total vacant town land). It should also be noted that the acreage zoned for mobile home parks is restricted to one isolated corner of the town. Furthermore

mobile home parks or subdivisions are not provided for in any other districts, including the planned unit development district. It is apparent that mobile homes are given a very second class treatment in the Penfield zoning ordinance - and deny yet another opportunity for low and moderate income housing.

PLANNED UNIT DEVELOPMENTS (PUD)

16. The PUD approach allows, in theory, excellent opportunity to provide for all income levels within a residential project. Even the Penfield zoning ordinance (Section 29-11.22(A)) states that "This article specifically encourages innovations in residential development so that the growing demands for housing at all economic levels may be met by greater variety in type, design, and

siting of dwellings and by the conservation and more efficient use of land in such developments." The objectives of the PUD section of the zoning ordinance also assert the need to meet the needs of residents at all economic lelves (Section 29-11.20(B)). Unfortunately, the zoning ordinance does not follow through on its excellent stated intent and objectives. Rather, in Section 29-11.21 (General Requirements for Planned Unit Development), the zoning ordinance establishes a series of rigid, and frequently excessive, use, dimensional and density requirements which essentially compromise its stated intent and objectives. Instead of encouraging the provision of housing for all economic levels and innovative land use and residential design, the ordinance specifies the percentage of housing types

permitted, specifies minimum floor areas, height, setbacks, and allowable densities, etc. The effect of these requirements is to prohibit, rather than encourage, the development of low and moderate income housing, as well as to discourage and/or prevent improved residential design.

CONCLUSION

17. Overall, the residential control aspects of the Penfield zoning ordinance must be classified as highly restrictive - essentially disallowing the construction of any new housing for low and moderate income individuals. Furthermore, in terms of public health, safety and welfare, there is no apparent justification to support the highly restrictive requirements of the residential (housing) provisions of the Penfield zoning

ordinance. The zoning ordinance is not based on any current comprehensive plan[5] and its provisions (for large lots, etc.) are neither explained nor justified within the ordinance nor within any planning document (known to these reviewers).

The Penfield zoning ordinance is basically an inflexible control mechanism which has the effect of producing economically and racially stratified housing arrangements without apparent regard for the housing needs either of its own citizenry or for the citizenry within the larger metropolitan community.

/s/Christian G. Kling
CHRISTIAN G. KLING

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/s/ Alan J. Taddiken
ALAN J. TADDIKEN

Jurat
Omitted
In
Printing

/s/ Richard C. Farley
RICHARD C. FARLEY

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FOOTNOTES

[1]Zoning, Chapter 29 of the Penfield Town Code.

[2]See the following reports, several of which specifically analyze zoning as an obstacle to building needed housing:

Genesee/Finger Lakes Regional Planning Board, Regional Housing Analyses (January, 1972); Public Controls and Housing (Regional Housing/An Innovative Study), (February, 1972); Senior Citizen Housing Survey: Preliminary Report (October, 1971).

Monroe County Planning Council, Toward a Positive Housing Program: An Initial Assessment of Housing in Monroe County, New York (February, 1970); Summary of Housing Needs (May, 1971)

Rochester Center for Governmental and Community Research, Inc., Housing in Monroe County, New York (April, 1970); Housing in Monroe County, New York: Summary of Research Staff Findings and Recommendations (April, 1970); Town Zoning and the Shortage of Moderate and Low Income Housing in Monroe County, New York (April, 1970).

[3]Minimum floor area for a two-story house (which is generally represented to be the most economical type of single-family detached house to build - and therefore is used in this example).

[4]Since the setback requirement starts at the road right-of-way line, a house would actually be set back an additional 10 to 14 feet from the street pavement.

[5]A master plan was completed for Penfield in May, 1966 by the staff of the Monroe County Planning Council. This plan lacks detailed housing consideration and analysis, and does not reflect either local or metropolitan housing needs.

UNITED STATES DISTRICT COURT
Western District of New York

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKE, Individually and on behalf of all other persons similarly situated, KATHARINE HARRIS, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC.,

Plaintiffs

vs.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM, M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chariman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Defendants

CIVIL 1972-42

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Attorney for Rochester Home Builders Association, Inc.

This is an action wherein the plaintiffs seek a declaratory judgment adjudging that the Town of Penfield Zoning Ordinance is unconstitutional and in other respects illegal; they seek to enjoin its administration and a judgment awarding damages, both compensatory and exemplary.

By notice of motion with attached affidavit filed April 6, 1972, James M. Hartman as a member of the firm of Harris, Beach & Wilcox, counsel to Andrew V. Siracuse, attorney for defendants, moves to dismiss the complaint on grounds specifically stated and, in the alternative, for an order for a more definite statement and for an order determining that the action has been improperly instituted as a class action. The motion was argued orally and the respective parties have filed written memoranda in support of their positions.

The plaintiffs Warth, Vinkey, Reichert and Harris, property owners and taxpayers of the City of Rochester, have suffered no measurable or particular direct financial injury occasioned by

the activities complained of. These plaintiffs are not taxpayers of the Town of Penfield. They are not attacking a spending measure of the Town of Penfield. The alleged causal connection between Penfield's zoning laws and the resulting tax burden on residents of Rochester is speculative, remote and indirect. They have no standing to sue. Doremus vs. Board of Education, 342 U.S. 429.

The plaintiffs Ortiz, Broadnax, Reyes and Sinkler have alleged no injury suffered as a result of the Penfield Zoning Ordinance or its administration. These plaintiffs have asserted no provision of the Penfield zoning ordinance nor any act of any defendant which violates the constitution or any federal statute. They have set forth no injury in fact. They have shown no connection between their grievances and the Penfield zoning ordinance or its administration. They have no standing to sue. Data Processing Service, Inc. vs. Camp. 397 U.S. 150.

The plaintiff Metro-Act of Rochester has alleged no facts to show its standing to sue. Sierra Club vs. Morton, 405 U.S. 727 (1972).

The plaintiffs have stated no claim or claims upon which relief can be granted under the equal protection clause or the due process clause of the Fourteenth Amendment. Euclid vs. Ambler Realty Co., 272 U.S. 365; Dandridge vs. Williams, 397 U.S. 471; James vs. Valtierra, 402 U.S. 137.

The plaintiffs have stated no claim or claims upon which relief can be granted under the First Amendment or the Ninth Amendment.

The plaintiffs have asserted no valid claim or claims for which relief can be granted under 42 U.S.C. Sections 1981, 1982 or 1983. They are not entitled to declaratory, injunctive, or monetary relief under those sections.

This suit should not be treated as a class action.

The plaintiffs have moved to add as a party plaintiff Housing Council in the Monroe County Area, Inc. Housing Council has no standing to sue. Sierra Club vs. Morton (supra).

Rochester Home Builders Association, Inc. has moved to intervene. This organization has no standing to sue. It has alleged no injury in fact. Even if it did have standing to sue, this court should, in the exercise of discretion, deny intervention because to allow intervention would unduly delay or prejudice the adjudication of the rights of the original parties and would confuse the trial with collateral issues. Accordingly it is hereby

ORDERED that plaintiffs' motion to add as a party plaintiff Housing Council in the Monroe County Area, Inc., is denied. The motion of Rochester Home Builders Association, Inc. to intervene is denied. This action was improperly instituted as a class action. The complaint is dismissed for the reasons herein stated, with costs.

/s/ HAROLD P. BURKE
United States District Judge

December 27, 1972.

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 139, 144—September Term 1973.

(Argued November 27, 1973 Decided April 18, 1974.)

Docket Nos. 73-1748
73-1749

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKEY, Individually and on behalf of all other persons similarly situated, KATHERINE HARRIS, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC.,

Plaintiffs-Appellants,

v.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT W[illegible], JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR.

DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Defendants-Appellees.

Before:

MOORE, HAYES and TIMBERS,

Circuit Judges.

Appeal from orders entered in the United States District Court for the Western District of New York, Harold P. Burke, *Judge*, granting motion to dismiss complaint for lack of standing and failure to state a claim upon which relief could be granted and denying motion of Rochester Homebuilders Association, Inc., to intervene as plaintiffs.

Affirmed.

EMMELYN LOGAN-BALDWIN, Rochester, New York (Frank A. Aloi, Robinson, Williams, Robinson & Angeloff, Rochester, New York, on the brief), *for Plaintiffs-Appellants Warth, Reichert, Vinkey, Harris, Ortiz, Broadnax, Reyes, Sinkler, and Metro-Act of Rochester, Inc.,*

MICHAEL NELSON and RICHARD WESLEY, on the brief, *for Plaintiff-Appellant Housing Council in the Monroe County Area, Inc.,*

SANFORD J. LIEBSCHUTZ, Rochester, New York (Liebschutz, Rosenbloom & Samloff, Rochester, New York, on the brief), *for Intervenor-Appellant Rochester Homebuilders Association, Inc.,*

DOUGLAS S. GATES, Rochester, New York (Harris, Beach & Wilcox, Rochester, New York, on the brief), *for Defendants-Appellees,*

THE NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING (Norman C. Amaker and Mollie W. Neal, Washington, D.C., on the brief), filed a brief as amicus curiae urging reversal.

HAYS, *Circuit Judge:*

Appellants brought this suit as a class action against the appelices, the Town of Penfield, New York, and the members of its Town Board, Town Planning Board, and Zoning Board. The complaint alleged that the town's zoning laws, on their face and as applied, violated appellants' rights under the first, ninth, and fourteenth amendments to the Constitution of the United States and 42 U.S.C. §§ 1981, 1982, and 1983. The district court dismissed the complaint for lack of standing and failure to state a claim upon which relief could be granted and denied appellants class action status. The court also denied a motion by the Rochester Homebuilders Association, Inc., to intervene as a plaintiff.

We affirm on the ground that appellants lack standing.

I. FACTS

Accepting appellants' factual allegations as true, as we must, we find the following facts relevant. The Town of Penfield is a suburb of Rochester. Its zoning laws are fairly typical for a suburban community. The town has zoned 90% of all vacant land for single family detached housing. The ordinance also fixes minimum lot sizes, floor areas, lot widths, and setbacks for dwellings. Where the ordinance

does permit multi-family dwellings, it limits density to twelve units per acre, limits the portion of the lot which may be occupied by the dwelling, and requires a minimum number of garage and unenclosed parking facilities for each unit.

The ordinance provides for Planned Unit Developments (PUD), which may contain a mixture of single-family and multi-family units. A substantial part of each PUD must be reserved for single-family dwellings with specified minimum acreages.

Appellants' complaint goes beyond the face of the town's zoning laws and further alleges certain affirmative acts which it claims deprived them of their rights. These acts involve various proposals by builders for multi-family housing in Penfield. One Joseph Audino on several occasions proposed a PUD for a site known as Beacon Hills. The Town Planning Board first denied the proposal, then accepted it with certain modifications which reduced the permissible density. The Town Board first accepted the proposal with the modifications, then rescinded the necessary rezoning. The town apparently claims that sewer facilities in the district are inadequate to serve the proposed development. The builder now plans to pump sewage to another district. Neither the builder nor anyone associated with him is a plaintiff in this action.

Penfield Better Homes, Inc., has proposed a project known as Highland Circle for "low moderate income housing." In September 1969 the Planning Board denied the proposal on a number of grounds. The corporation is not a plaintiff nor associated with any plaintiff in this action.[1]

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1 Penfield Better Homes is a member of appellant Housing Council in the Monroe County Area, Inc. However, this does not suffice to give Housing Council standing. See discussion of Housing Council, infra. Appellants also allege that one director of Penfield Better Homes is a member of appellant Metro-Act of Rochester. This even more clearly fails to confer standing. See discussion of Metro-Act, infra.

A proposal by O'Brien Homes, Inc., to build apartment housing was originally denied. The Planning Board has yet to act on a modification of the same proposal.

Appellants also refer to several other proposals for apartment housing which have met with little success. They claim that only two proposals for PUDs have passed the first stage of the necessary three stages of approval. In no case do appellants allege any involvement in these proposals.

Appellants argue that the Penfield zoning laws, on their face and as applied, violate their rights in a number of ways. First, appellant taxpayers of Rochester claim that because of Penfield's zoning laws the City of Rochester must assume more than its "fair share" of low income, tax abated housing property, thereby shrinking Rochester's tax base and forcing property owners in Rochester to pay higher property taxes.[2] Second, appellants claim that Penfield's zoning practices unconstitutionally bar low and middle income persons, especially members of racial minority groups, from residing in Penfield.[3] Intervenor-appellant Rochester Homebuilders Association, Inc. claims that the town's zoning practices have deprived its members of the opportunity to construction housing for low and middle income persons, thereby harming the association's members financially.

Appellants seek a declaratory judgment that Penfield's zoning practices are illegal, an injunction against enforcing the zoning ordinance, an injunction compelling enactment of an acceptable ordinance, and monetary damages.

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2 These appellants also claim that appellees deprive them of a fair share of their federal tax dollars by refusing to permit federally financed housing in the town.

3 Appellants also claim that appellees' practices violate their right to travel under the first, ninth, and fourteenth amendments and their right of peaceable assembly under the first and fourteenth amendments.

II. Standing

Although the Supreme Court has discussed standing to sue on many occasions, certain aspects of the doctrine continue to present difficulties. Moreover, during the last few years the Court has revolutionized the law of standing. In *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U.S. 150 (1970), and *Barlow* v. *Collins,* 397 U.S. 159 (1970), the Court announced a two-pronged test of standing: the plaintiff must allege an "injury in fact," and must seek to protect an interest "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Data Processing,* supra, at 152-153. However, the Court has not explained what constitutes an "injury in fact." See Dugan, *Standing to Sue: A Commentary on Injury in Fact,* 22 Case W. Res. L. Rev. 256, 258 (1971). Moreover, reliance on precedents is especially hazardous in this area. As the Court remarked in *Data Processing,* "[g]eneralizations about standing to sue are largely worthless as such." 397 U.S. at 151. The Court has laid down some rules in certain areas, such as taxpayer, competitor, and environmental suits. Except for appellants who claim standing as taxpayers, however, these rules are not very helpful here.[4]

Standing is an element of justiciability, "surrounded by the same complexities and vagaries that inhere in justiciability." *Flast* v. *Cohen,* 392 U.S. 83, 98 (1968).

The gist of the question of standing is whether the plaintiff has "alleged such a personal stake in the outcome of

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4 In *Data Processing* the Court acknowledged the limited authority of standing cases from one area in relation to cases in other areas:

> "*Flast* was a *taxpayer's* suit. The present is a *competitor's* suit. And while the two have the same Article III starting point, they do not necessarily track one another." 397 U.S. at 152 (emphasis in original).

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the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). See also *O'Shea* v. *Littleton*, —— U.S. ——, 94 S. Ct. 669, 675 (1974); *Flast* v. *Cohen*, supra, at 99.

A. *Appellant Taxpayers of Rochester*

Appellants Vinkey, Reichert, Warth, and Harris own land within the city of Rochester. They claim that the Penfield zoning laws exclude low and moderate income persons, thereby requiring Rochester to permit more than its "fair share" of tax-abated housing projects. This shrinks the tax base of Rochester, which then must impose higher tax rates on appellants and others similarly situated in order to meet its fiscal needs.

As a general rule the interests of a federal taxpayer in federal expenditures are too "minute and indeterminable . . . fluctuating and uncertain" to provide a basis for standing. *Frothingham* v. *Mellon*, 262 U.S. 447, 487 (1923). The rule applies equally to state taxpayer suits in federal courts. *Doremus* v. *Board of Education*, 342 U.S. 429 (1952). In *Flast* v. *Cohen*, 392 U.S. 83 (1968), the Court created an exception to the rule: a federal taxpayer may contest measures alleged to violate "specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power." Id. at 103.

Appellants do not allege a violation of a "specific constitutional limitation" on taxing and spending. Indeed, they do not even allege that Rochester's taxes or expenditures are unconstitutional. They allege only that certain acts of appellees which do not involve taxing or spending have operated to raise their taxes.

In *Flast* the Court stated that its decision was "consistent with the limitation upon state-taxpayer standing

in federal courts in *Doremus* . . . ." 392 U.S. at 102. Certainly if taxpayer standing was not justified in *Doremus* because plaintiff's interest was too remote, standing cannot be found here, where there is such an attenuated line of causation between the allegedly illegal acts (Penfield's zoning laws) and the injury of which appellants complain (higher property taxes). A great variety of actions taken by a state or a municipality might arguably affect the rate of taxation in other states or towns. This hardly gives taxpayers in the affected states or towns standing to contest all such actions.[5]

B. *Individual Appellants Claiming Standing on Other Grounds*

Appellants Broadnax, Sinkler, and Reyes are blacks and Puerto Ricans of low income who reside in Rochester. Each has sought but failed to obtain housing in Penfield. They allege that Penfield's zoning laws effectively bar low income housing within the town and therefore exclude them and persons similarly situated from living in Penfield. Appellant Ortiz lives in Wayland, New York, and works in Penfield. He makes the same allegations as appellants Broadnax, Sinkler and Reyes, and in addition claims as injury the commuting expenses he incurs because he cannot live in Penfield.

None of the appellants claims that anyone has refused to sell or lease housing or property to him. Indeed, appellants concede that they cannot afford any existing housing within the town. They do not claim to have any interest in land within the town or any connection with any plan to construct housing for them within the town.

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5 Appellants also base a claim of standing on their status as federal taxpayers. See note 2, supra. This claim does not attack a spending measure of Congress and is not based on a specific constitutional limitation on spending. The claim therefore fails.

The Supreme Court has not established guidelines as to what constitutes an injury in fact for purposes of standing in this area. Nor have the lower federal courts, in this circuit or otherwise, considered the specific issue raised here. Appellants cite several federal cases in which a party was held to have standing to challenge zoning on civil rights grounds. In most of these cases the party attacking zoning had an interest in land.[6] A few cases in other circuits have taken a short step beyond this. In *Park View Heights Corp.* v. *City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972), and *Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970), developers contested zoning which

6 In *Kennedy Park Homes Ass'n, Inc.* v. *City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971), the Diocese of Buffalo had committed itself to sell thirty acres of land it owned in Lackawanna to Kennedy Park Homes for low-income housing. Both the Diocese and the Association clearly had an interest in land.

In *Township of River Vale* v. *Town of Orangetown*, 403 F.2d 684 (2d Cir. 1968), this court held that plaintiff town had standing to sue defendant town which had rezoned property adjoining plaintiff on the allegation that the zoning was arbitrary and capricious and would injure plaintiff by reducing its revenues. We held that plaintiff need not be a resident of the town whose zoning practices were challenged. Id. at 686. We did not abandon the requirement, which plaintiff clearly met, that a party have a personal stake in the outcome. The holding reflects the obvious point that landowners may be affected by the zoning of adjoining properties, and that this interest suffices to confer standing. Cf. 3 K.C. Davis, Administrative Law Treatise § 22.16 at 283 (1958).

Neither *Boraas* v. *Village of Belle Terre*, 476 F.2d 806 (2d Cir.), prob. juris. noted, 94 S. Ct. 234 (1973), nor *Norwalk CORE* v. *Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968), involved the kind of standing issue presented here. In *Boraas* we granted standing to unrelated persons living together in an apartment to challenge an ordinance limiting the right of unrelated persons to live in the same dwelling. In *Norwalk CORE* persons displaced by urban renewal had standing to challenge the city's procedures in relocating them. In each case plaintiff's personal stake was clear.

In most of the civil rights challenges to zoning in other circuits plaintiffs also had some interest in land sufficient to warrant standing. See *Southern Alameda Spanish Speaking Org.* v. *City of Union City*, 424 F.2d 291 (9th Cir. 1970); *Sisters of Providence* v. *City of Evanston*, 335 F. Supp. 396 (N.D. Ill. 1971); *Crow* v. *Brown*, 332 F. Supp. 382 (N.D. Ga. 1971), aff'd, 457 F.2d 788 (1972) (per curiam).

prevented them from building low income housing projects on parcels of land which they owned. In both cases the court permitted potential residents of the proposed projects to join as plaintiffs. Without deciding whether we approve these holdings, we note that the standing of potential residents in these cases presents an issue very different from the one presented here. The focusing of the controversy on a particular project asures "concrete adverseness." The concrete possibility of obtaining new and better housing gives potential residents a personal stake in the outcome. The relief requested is not hypothetical.

The requirement of standing helps to insure that "the questions will be framed with the necessary specificity . . . to assure that the constitutional challenge will be made in a form traditionally thought to be capable of judicial resolution." *Flast* v. *Cohen*, 392 U.S. 83, 106 (1968). See also *Barlow* v. *Collins*, 397 U.S. 159, 167, 171 (1970) (Brennan, *J.*, concurring). In the instant case appellants cannot establish this specificity and the necessary "concrete adverseness."

The doctrine of standing also turns on whether the party in question has a "personal stake in the outcome of the controversy." *O'Shea* v. *Littleton*, —— U.S. ——, ——, 96 S. Ct. 669, 675 (1974); *Sierra Club* v. *Morton*, 405 U.S. 727, 732 (1972); *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). Appellants lack such a personal stake. The essence of their complaint is that the zoning practices of the appellees are unfair. However true that charge may be, absent a showing that appellants themselves have suffered from these practices they lack standing to challenge them. Their dispute with appellees reflects primarily a political disgruntlement. They indicate no benefit which a judgment favorable to them would produce. They allege neither

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capability nor intent to construct housing for themselves on any land which the court might order rezoned as an element of relief.

Indeed, appellants' prayer for relief demonstrates their lack of personal stake in the outcome and their lack of standing. They request equitable relief in the form of a declaration that the Penfield zoning ordinance is unconstitutional, an injunction against enforcing it, and an injunction requiring enactment of a new ordinance. Granting this relief would not clear roadblocks to currently planned housing which appellants hope to occupy. It would not benefit appellants in any way in the foreseeable future. The prayer for relief also illustrates the lack of specificity. Appellants request neither zoning of any particular parcels nor approval of any specific projects.

In *O'Shea* v. *Littleton*, —— U.S. ——, 94 S. Ct. 669 (1974), plaintiffs brought suit alleging that defendants, various judicial and law enforcement officials of Alexander County, Illinois, were administering the county's criminal justice system in a discriminatory manner so as to deprive all black and some white citizens of a variety of constitutional rights. The Supreme Court held that plaintiffs had failed to state an Article III case or controversy. 94 S. Ct. at 675. The Court's opinion noted that the complaint "allege[d] injury in only the most general terms" and that "[n]one of the named plaintiffs is identified as having himself suffered any injury in the manner specified." Id. at 676. The threat of injury to the named plaintiffs was too "abstract," "conjectural," and "hypothetical" to give them a "personal stake in the outcome." Id. at 675.

Here we have a similar case. Appellants alleged that appellees' zoning practices deprive low income minority groups of equal protection. However, none of the named plaintiffs has suffered from any of the specific, overt acts

alleged. Thus appellants' personal connection with these practices is too abstract, conjectural, and hypothetical to establish an Article III case or controversy.

C. *Metro-Act of Rochester, Inc.*

Appellant Metro-Act of Rochester, Inc., is a non-profit corporation whose main purpose is "to alert ordinary citizens to problems of social concern." Low income housing is one area to which the organization has directed its attention. Appellant claims standing on a number of grounds, none of which is adequate.

First, appellant claims standing because of its "special interest" in housing matters. The Supreme Court's decision in *Sierra Club* v. *Morton*, 405 U.S. 727, 735-40 (1972), rejected this as a basis for standing.

Second, Metro-Act claims standing as a taxpayer of the city of Rochester. This approach fails for the same reasons stated above with respect to individual taxpayer appellants.

Third, appellant claims standing as representative of its low income members who seek housing in Penfield. Since we have decided that these individuals lack standing, the organization cannot derive standing from them.

Fourth, Metro-Act claims standing on the ground that one director of Penfield Better Homes is one of its members. We have decided that membership of Penfield Better Homes in Housing Council does not suffice to confer standing. (See discussion, infra.) It follows that membership of a director in Metro-Act certainly cannot confer standing.

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Finally, relying on *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), Metro-Act claims standing as representative of its members who live in Penfield.[7] In *Trafficante* the plaintiffs, tenants of an apartment complex, challenged the allegedly discriminatory rental practices of their landlord. They claimed as injury the loss of social, business, and professional benefits of living in an integrated community and embarrassment of being stigmatized as living in a "white ghetto." They based their claim of standing on section 810(a) of the Civil Rights Act of 1968, 42 U.S.C. § 3610(a), which gives standing to "[a]ny person who claims to have been injured by a discriminatory housing practice . . . ." The Supreme Court held that plaintiffs had standing.

Trafficante is distinguishable from the present case. We have emphasized that generalizations about standing are largely useless. This is especially true of a case which focused on the peculiarities of one piece of legislation. The Court in *Trafficante* looked to the legislative history and administrative interpretation of section 810(a). 409 U.S. at 210. The Court also considered the practical difficulties of enforcing the Act and concluded that Congress must have intended persons in plaintiffs' position to be able to sue as private attorneys-general. Metro-Act has presented us with no similar factors in this case.

The concurring opinion of Justice White, joined by Justices Blackmun and Powell, further suggests that the holding of *Trafficante* should apply only to cases under the Civil Rights Act of 1968. Justice White expressed doubt that, in the absence of section 810(a), the suit would present an Article III case or controversy. 409 U.S. at 212. The six remaining justices explicitly declined to consider

7 Appellants' complaint did not include residents of the Town of Penfield as a class which they purported to represent. Metro-Act has, however, made this claim on appeal.

whether plaintiff might also have standing under 42 U.S.C. § 1982. 409 U.S. at 209 n.8. The reasoning of the majority opinion and the explicit statement of the three concurring justices strongly indicate that a majority of the Court would not find standing for Metro-Act on this basis.

D. *Housing Council in the Monroe County Area, Inc.*

Housing Council in the Monroe County Area, Inc., is a non-profit corporation whose purpose is to "combat community deterioration through the elimination of racial and economic discrimination in housing." Its membership includes public and private agencies and organizations seeking to improve the housing of persons of low and moderate income. Plaintiffs below moved to add Housing Council as a party plaintiff. The district court held that Housing Council lacked standing. We agree.

Housing Council alleges no injury in fact to itself. To the extent that it bases standing on representation of various groups of residents in the metropolitan Rochester area, its claim fails for the same reasons given in our discussion of other appellants.

Housing Council also claims standing because Penfield Better Homes Corp., one of its members, has been denied approval of a specific housing project proposal. We note first that if this allegation conferred standing on appellant it would confer only that standing which its member would have had. Housing Council has not indicated that it limits its suit to the dispute over the proposal of Penfield Better Homes. Rather it joins in the more general and abstract claims of other appellants.

We think that Housing Council lacks standing to vindicate even the more limited claims which Penfield Better Homes might have against appellees. It is highly doubtful that an organization has standing to represent its mem-

bers in most cases under the Civil Rights Act. See *Aguayo* v. *Richardson*, 473 F.2d 1090, 1098-1101 (2d Cir. 1973), cert. denied, 94 S. Ct. 900 (1974). Certainly the special circumstances favoring organizational standing in cases like *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 458-60 (1958), and *NAACP* v. *Button*, 371 U.S. 415, 428-29 (1963), are absent here. Alleged specific harm is limited to a single member. There is no reason why Penfield Better Homes cannot assert its own rights as well as or better than Housing Council.

Housing Council therefore lacks standing.

E. *Rochester Homebuilders Association, Inc.*

Rochester Homebuilders Association, Inc., is a nonprofit trade association of persons and companies engaged in various phases of the residential construction industry in the metropolitan Rochester area. In the court below the association moved, pursuant to Fed. R. Civ. P. 24(b), to intervene as plaintiffs in this action. The district court denied the motion on the grounds that the association lacked standing and that its intervention would create undue delay or prejudice. We agree that the association lacked standing and do not reach the Rule 24(b) issue.

As we noted above, an organization may have standing to assert the rights of its members where there are special circumstances. The rule applies to trade associations as well as to other organizations. *National Motor Freight Traffic Ass'n* v. *United States*, 372 U.S. 246 (1963) (per curiam). We find no such special circumstances here.

Moreover, as we noted above with respect to appellant Housing Council, an organization seeking to assert rights of its members has only that standing which its members would have had. Rochester Homebuilders has not tied its claim of standing to specific acts of appellees which have

affected its members. Instead it makes the same claims as other appellants. The members of the association would not have standing to raise these claims. The association cannot derive such standing from them.

Affirmed.

In The

Supreme Court of the United States

Supreme Court, U. S.
FILED
AUG 31 1974
MICHAEL RODAK, JR., CLERK

October Term, 1974

No. 73-2024

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKEY, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC., HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC., ROCHESTER HOME BUILDERS ASSOCIATION, INC.,

Petitioners,

vs.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Respondents, Ira Seldin, Chairman, James O. Horne, Malcolm M. Nulton, Albert Wolf, John Betlem, as members of the Zoning Board of the Town of Penfield; George Shaw, Chairman, James Hartman, John D. Williams, Richard C. Ade, Timothy Westbrook, as members of the Planning Board of the Town of Penfield; Irene Gossin, Supervisor, Francis J. Pallischeck, Dr. Donald Hare, Lindsey Embrey, Walter W. Peter, as members of the Town Board of the Town of Penfield, and the Town of Penfield, New York, submit this brief in opposition to the Petition of Robert Warth, Lynn Reichert, Victor Vinkey, Katherine Harris, Andelino Ortiz, Clara Broadnax, Angelea Reyes, Rosa Sinkler, individually and on behalf of all other persons similarly situated, Metro-Act of Rochester, Inc., Housing Council in the Monroe County Area, Inc., and Rochester Home Builders Associations, Inc., that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this matter on April 18, 1974.

Opinions Below

The judgment of the United States Court of Appeals for the Second Circuit, entered on April 18, 1974, and reported at 495 F.2d 1187 (1974), affirmed the dismissal of the complaint and denial of the motion to intervene of the Rochester Home Builders Association and the motion by such petitioners as were originally plaintiffs to join the Housing Council in the Monroe County Area, Inc. by the United States District Court for the Western District of New York, dated December 27, 1972. The opinion of the United States Court of Appeals for the Second Circuit is attached to the Petition for a Writ of Certiorari as Appendix A; the unreported opinion of the District Court for the Western District of New York is attached to the Petition as Appendix B.

Jurisdiction

Respondents do not question the jurisdiction as set forth in the Petition.

Constitutional and Statutory Provisions Involved

Respondents do not question that the Constitutional and statutory provisions named in the Petition have been invoked by the petitioners.

Question Presented

The overriding question raised by the Petition is whether the various individual and corporate petitioners have standing to challenge, on various Constitutional and statutory theories, the zoning ordinance of the Town of Penfield, New York, and fifteen years' administration of that ordinance.

Statement

Although there are ten named plaintiffs in this case, their claims to standing fall into one or another of three categories.

(1) *As taxpayers.* The petitioners Vinkey, Reichert, Warth and Harris have sued as "property owners and taxpayers of the City of Rochester." The remarkable thing about them is that they are not suing the municipality in which they own property and to which they pay real property taxes, but another municipality. They pay taxes to the City of Rochester, and they pay none to the Town of Penfield; but it is the Town of Penfield, and its officials, whom these "taxpayer-plaintiffs" have sued.

Their theory as stated in the complaint is that they

> are aggrieved in that they are paying a greater proportionate share of real estate taxes to the City of Rochester than are other residents of the Rochester

> metropolitan area to their respective towns because the City of Rochester has and must continue to permit more than its fair share of tax abated housing projects within its territorial limits to meet the low and moderate income housing requirements of the metropolitan Rochester area by reason of the exclusionary practices of defendants.

The City of Rochester and the Town of Penfield are separate municipalities, each with its own taxing powers, spending powers and zoning powers. The "taxpayer-plaintiffs" in this case have not challenged either taxing or spending legislation of the Town of Penfield, but rather its zoning ordinance.

There is no petitioner who claims standing as a taxpayer of the Town of Penfield.

(2) *As persons of low income and members of racial minorities.* Plaintiffs Broadnax, Sinkler and Reyes are Blacks and Puerto Ricans who reside in Rochester. Each claims to have sought to obtain housing in Penfield without success. In the nearly five hundred pages which Petitioners contributed to the record below, none of these three, either in the complaint or in her affidavit, mentions any occasion on which she went into the Town of Penfield or communicated with any person who was in the Town of Penfield or had any dealing with respect to any property there for any purpose. None of the three says anything about any housing project or planned construction or attempted construction that she has had anything to do with. None has had any dealing at all with any of the respondents or any other official of the Town of Penfield; none has ever applied for anything from any official or official body there, let alone having been refused anything. No effort made by any of them or frustration suffered by any of them has been mentioned anywhere in the record.

Of the petitioner Ortiz, the complaint says that he is a resident of Wayland, New York, and the owner of real property

in the City of Rochester, New York; that he is of Spanish/-Puerto Rican extraction; that he is employed in the Town of Penfield; and that he has been "excluded from living near his employment *as he would desire* by virtue of" the zoning practices of the Town of Penfield. (Emphasis added) The complaint does not illuminate his grievance beyond this. In his affidavit submitted in opposition to the original motion to dismiss, Mr. Ortiz said that as of that time, he was no longer employed in the Town of Penfield; and that is the present state of the record. He used to work there, but he has not worked there since the motion was made which generated this appeal.

(3) *As organizations:* Three organizations seek standing, although only one of them, Metro-Act of Rochester, Inc., is one of the original plaintiffs in the action. The Rochester Home Builders Association, Inc., moved under F.R.C.P. 24(b) to intervene in the action at the same time as the original motion to dismiss. The Housing Council in the Monroe County Area, Inc. was sought by the plaintiffs, presumably under F.R.C.P. 19(a), to be joined involuntarily at that same time; the organization did not struggle against joinder, however, but appeared in favor of the motion by its own counsel. Neither the District Court nor the Court of Appeals regarded any of the three as having standing.

All three of these organizations and their relation to the case are thoroughly and accurately described in the Court of Appeals' decision below (see pp. A-12 through A-16 of the Appendix to the Petition for Certiorari), and those descriptions need not be elaborated further here.

ARGUMENT

POINT I

No Conflict Among the Circuits Exists On Issues Of Standing Involved Here.

The United States Court of Appeals for the Second Circuit held below that none of the petitioners in this case has standing to sue. This is the state of affairs of which the petitioners seek review, partly on the ground of conflict among the circuits.

It is one thing, however, to say that Court of Appeals for various circuits have recognized the standing of certain plaintiffs to challenge municipal zoning ordinances under the Fourteenth Amendment and federal civil rights statutes. It is another to say that the decision of the Second Circuit in this case is in conflict with decisions of the other circuits. The first thing can be true without the second thing being true. What we have here is not different doctrines of standing developing in the different circuits, but plaintiffs in some cases who really do have standing and plaintiffs in another case, this one, who do not.

In every one of the cases which the petitioners have cited to this Court to show a conflict among the circuits, the plaintiffs had a personal stake in a concrete and particular conflict with local authority which existed before the litigation and then gave rise to it. In this case there was no contact, so far as the pleadings reveal, between the plaintiffs and the Town of Penfield before the lawsuit. In each of the cases cited by petitioners, the plaintiffs had something specifically to gain or lose from the judgment in their case; they were not looking just for the holding of the court on a subject in which they had a political or philosophical interest.

Park View Heights Corporation v. City of Black Jack, 467 F.2d 1208 (8th Cir. 1972) is the first of the cases cited. Here the plaintiffs attacked the validity of a zoning ordinance on the

ground that it "effectively prohibits the construction of multi-racial, federally subsidized, moderate and low income housing in the City of Black Jack, Missouri."

Two of the plaintiffs were nonprofit corporations. One was incorporated for the purpose of owning and operating the specific housing development in question; it had been formed by the original sponsors of the project, which was known as the Park View Heights apartments. It had title to the land which was the proposed site. Its incorporators had obtained a "feasibility letter" from H.U.D. which reserved federal funds for the project and which was tantamount to a contractual commitment. Architectural plans had been completed and approved. A mortgage had been secured, and legal and organizational planning of the project had been completed.

The other plaintiff was a nonprofit organization whose corporate purpose was to use the St. Louis religious community's resources to alleviate urban problems. It had participated in the original land purchase and in the planning of the project and had advanced "seed money" for the project which had not been repaid.

The eight individual plaintiffs were persons who desired to live in the Park View apartments, and each of whom qualified for residence there.

Not only were the plaintiffs in the *Park View* case involved with a specific project, but they were also confronted with specific adverse, ad hoc governmental action. Indeed, the incorporation of the City of Black Jack itself, a municipality which had not theretofor existed, was the local response to the Park View Heights project; and, upon incorporation, Black Jack's newly formed Zoning Commission promptly called hearings on a zoning ordinance which would effectively prevent the construction of any new multi-family dwelling units within the City of Black Jack.

There is no conflict between the law of the *Park View Heights* case and the prevailing law of the Second Circuit. Just the contrary, the Eighth Circuit, in reaching its decision, invoked the authority of the Second Circuit in *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108 (2nd Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971).

But there is nothing like any of this in the present case — no purchase, no mortgage, no architects, no loans, no feasibility letters, no identified agency action — nothing but generalized political disgruntlement with a zoning ordinance which never once gets down to cases.

The other cases cited by petitioners are distinguishable in the same way.

Daily v. City of Lawton, Oklahoma, 425 F.2d 1037 (10th Cir. 1970), grew out of hostile local reaction to a particular low-income housing project with which the plaintiffs were closely involved. The litigation was triggered by final agency action. Indeed standing does not appear to have been an issue on this appeal taken after trial.

Crow v. Brown, 457 F.2d 788 (5th Cir. 1972), was brought by the owners of property whose plans to build low-income housing had been frustrated by local agency action. They were joined by plaintiffs who were on the waiting list of the Atlanta Housing Authority.

United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach, 493 F.2d 799 (5th Cir. 1974), arose from the City's refusal to permit a proposed housing project to tie into its water and sewer systems. The action was brought by the organization which was attempting to build the project and by certain individual farm workers whom it represented.

Shannon v. United States Department of Housing and Urban Development, 436 F.2d 809 (3rd Cir. 1970). Plaintiffs here

were "white and black residents (some homeowners and some tenants), businessmen in, and representatives of private civic organizations in the East Poplar Urban Renewal Area of Philadelphia," suing to enjoin specific H.U.D. action directly affecting the area and particularly challenging the procedures by which H.U.D. acted. The issues in the case were real and practical, not academic. The plaintiffs focused on specific agency action which focused on and would adversely affect their neighborhood and therefore the plaintiffs themselves.

Finally, the petitioners invoke *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205 (1972). The Court of Appeals distinguished the case in light of the peculiarities of the legislation involved there, section 810(a) of the Civil Rights Action of 1968, and the evident congressional intent to confer standing on persons in plaintiffs' position. It is important also that the majority opinion in *Trafficante* stressed the fact that the issue raised by the complaint was not academic: "The dispute tendered by this complaint is presented in an adversary context. [citation omitted] Injury is alleged with particularity, so there is not present the abstract question raising problems under Art. III of the Constitution." *Id.* at 211. Even here, where the Court obviously had some reservations about its recognition of standing, the case involved tenants of an apartment complex who sued *their* landlord with respect to the way it was operating *that* complex, specifically in a racially discriminatory manner made illegal by the act. While *Trafficante* may represent the outer limits of standing, it still had a fabric to it, of place and time and action, of connection between the parties, that this lawsuit against the Town of Penfield wholly lacks.

POINT II

The Decision Below Is Not In Conflict With The Law Of Standing As Embodied By This Court's Decision In United States v. Students Challenging Regulatory Agency Procedures.

In their argument that the decision of the Second Circuit in this case is in conflict with applicable law of the Supreme Court of the United States, the petitioners have relied wholly on *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669 (1973). They argue that the injury allegedly suffered by the plaintiffs in this case "is no more remote or speculative than that suffered by the parties in *SCRAP*."

Unless *SCRAP* renders all the pre-existing law of standing obsolete, however, the petitioners' arguments must be unavailing. *SCRAP* is distinguishable from this case in myriad ways.

In the first place, *SCRAP* dealt with specific agency action, orders of the Interstate Commerce Commission allowing the collection by substantially all the Nation's railroads of a 2.5% surcharge on most freight rates.

Secondly, the plaintiffs there "alleged a specific and perceptible harm" that resulted to them from this agency action and which the Court said should not be ignored simply "because many people suffer the same injury." *Id.* at 687

Thirdly, there was a logical relationship between the nature of the alleged wrong — a major federal action affecting the environment taken without the preparation of an environmental impact statement as required by federal statutory law — and the status asserted by the plaintiffs. For they were persons who, as they alleged, specifically used and enjoyed the environment, so that harm to the environment would result in harm to them "that distinguished them from other citizens who had not used

the natural resources that were claimed to be affected." *Id.* at 689. Indeed these were persons who *organized* to enhance the environment. They were adversely affected, if their allegations were to be accepted as true, in that very interest which the federal statute in question, the National Environmental Protection Act, with its requirement of an impact statement, was meant to protect.

On every score the non-taxpayer plaintiffs here have failed to make adequate allegations or to flesh them out in their voluminous affidavits and exhibits.

They have not focused on any single action or any coordinated actions of any body or officer of the Town of Penfield, or on any specific provisions of the zoning ordinance of the Town. So, while this Court in *SCRAP* allowed as how an "attenuated line of causation" (*Id.* at 688) may sometimes be properly traced to the injury inflicted, there has not in this case been any first cause identified in the complaint or supporting papers; without that initial action from which a chain of events follows, the line of causation itself cannot be ascertained.

Nor will the process work in reverse. There is no injury in fact alleged whose origins can be traced back to conduct of the respondents. There are plaintiff/petitioners here who allege that they are ill-housed and desire to be better-housed; but beyond that allegation the record is devoid of events. The frustration alleged by the Petitioners here is not explained even in terms of any efforts made by any of them to take up residence in Penfield, let alone any official action or provision law which thwarted such efforts.

Even if the relief sought in the complaint (which has been omitted from the petitioners' Appendix, notwithstanding that this case comes to the Court from an affirmed order of dismissal of the complaint) were granted and the whole zoning ordinance of the Town of Penfield were ruled unconstitutional, nothing

would change for any of the petitioners. They would have a holding, but they would not have a house or a variance or a permit, or a rental project preserved or an investment protected. They would have a ruling of law only.

In relying on *SCRAP*, therefore, they have overlooked language in the majority opinion which makes it clear that well-established principles of standing have not been scrapped:

> In *Sierra Club*, though, we went on to stress the importance of demonstrating that the party seeking review be himself among the injured, for it is this requirement that gives a litigant a direct stake in the controversy and prevents the judicial process from becoming no more than a vehicle for the vindication of the value interests of concerned bystanders. *Id.* at 687

And again:

> Of course, pleadings must be something more than an ingenious academic exercise in the conceivable. A plaintiff must allege that he has been or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action. *Id.* at 688-689

Here is precisely where the difference between the two cases lies. Nothing in particular precipitated the lawsuit, nothing done by the respondents or suffered by the petitioners. They are generally, academically or politically disgruntled. That is all, and that is not enough.

POINT III

With Respect To The Petitioners Who Assert Standing As Taxpayers Of An Adjacent Municipality And Those Who Assert Organizational Standing, Respondents Adopt And Urge The Reasoning Of The Court Of Appeals Below, Which Appears At A-7 And A-8 Of The Appendix To The Petition For Writ Of Certiorari, Regarding Taxpayers, And At A-12 Through A-16 Of The Appendix To The Petition, Regarding Organizational Petitioners.

CONCLUSION

For the reasons set forth in this brief and in the opinions below, it is respectfully submitted that, under the law which prevails not only in the United States Court of Appeals for the Second Circuit but in this Court and the United States Courts of Appeals for other Circuits, these petitioners lack standing to challenge the Constitutional and statutory legality of the zoning ordinance of the Town of Penfield.

Respectfully submitted,

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BRIEF OF PETITIONERS

(Over)

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In The

Supreme Court of the United States

October Term, 1974

No. 73-2024

ROBERT WARTH, Individually and on behalf of all other persons similarly situated, LYNN REICHERT, Individually and on behalf of all other persons similarly situated, VICTOR VINKEY, Individually and on behalf of all other persons similarly situated, KATHERINE HARRIS, Individually and on behalf of all other persons similarly situated, ANDELINO ORTIZ, Individually and on behalf of all other persons similarly situated, CLARA BROADNAX, Individually and on behalf of all other persons similarly situated, ANGELEA REYES, Individually and on behalf of all other persons similarly situated, ROSA SINKLER, Individually and on behalf of all other persons similarly situated, METRO-ACT OF ROCHESTER, INC., HOUSING COUNCIL IN THE MONROE AREA, INC., ROCHESTER HOME BUILDERS ASSOCIATION, INC.,

Petitioners,

vs.

IRA SELDIN, Chairman, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, as members of the Zoning Board of the Town of Penfield; GEORGE SHAW, Chairman, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, as members of the Planning Board of the Town of Penfield; IRENE GOSSIN, Supervisor, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, as members of the Town Board of the Town of Penfield, and the TOWN OF PENFIELD, NEW YORK,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit (A. 952)* is reported at 495 F.2d 1187 (2d Cir. 1974). The opinion of the District Court for the Western District of New York (A. 948), dated December 27, 1972, is not officially reported.

JURISDICTION OF THIS COURT

The judgment of the Court of Appeals for the Second Circuit was entered on April 18, 1974. The petition for a writ of certiorari was filed on July 15, 1974 and certiorari was granted on October 15, 1974. Jurisdiction is conferred upon this Court by 28 U.S.C. §1254(1).

QUESTION PRESENTED

WHETHER PLAINTIFFS' HAVE STANDING TO SEEK JUDICIAL REVIEW OF PENFIELD'S RACIALLY DISCRIMINATORY AND EXCLUSIONARY ZONING ORDINANCE AND DEFENDANTS' ZONING PRACTICES WHICH DEPRIVE PLAINTIFFS OF CONSTITUTIONAL AND STATUTORY RIGHTS AND CAUSE THEM TO SUFFER ECONOMIC DAMAGE, PHYSICAL AND EMOTIONAL HARDSHIP, AND LOSS OF THE SOCIAL BENEFITS OF LIVING IN AN INTEGRATED COMMUNITY.

CONSTITUTIONAL PROVISIONS

Article III §2, clause 1, of the Constitution of the United States provides:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

*Numbers preceded by "A" refer to pages of the Appendix.

This case also involves the First, Ninth, and Fourteenth Amendments to the Constitution of the United States which are set forth in Appendix C of the Petition for Writ of Certiorari.

STATUTES INVOLVED

The statutory provisions involved are the Civil Rights Act of 1866, 42 U.S.C. §1982, the Civil Rights Act of 1870, 42 U.S.C. §1981, and the Civil Rights Act of 1871, 42 U.S.C. §1983. The pertinent portions of these statutory provisions are set forth in Appendix C of the Petition for Writ of Certiorari.

STATEMENT OF CASE

The question in this case is whether parties have standing to challenge a suburban town's zoning practices and policies which are racially discriminatory and exclusionary. Plaintiffs-petitioners are individuals[1] and organizations whose members are adversely affected by the Town of Penfield's zoning ordinance and by defendants' administration of that law.

Defendants-respondents are the public officials[2] responsible for perpetuating the racially discriminatory and exclusionary

[1]Plaintiffs instituted this action on behalf of themselves and all other persons similarly situated. (A. 9-10). Although the District Court denied plaintiffs' request for class action certification, the propriety of that order is not presently before this Court.

[2]Defendants are the individual members of the Zoning Board, Planning Board, and Town Board of the Town of Penfield, Monroe County, New York.

housing pattern in Penfield. Additionally, the Town of Penfield, a municipal corporation in the metropolitan area of Rochester, New York, is a defendant-respondent in this action.

The individual plaintiffs and Metro-Act of Rochester, Inc. [hereinafter, "Metro-Act"] instituted this action alleging that the challenged zoning ordinance, as enacted and administered, excludes minority, low income persons from living in the Town of Penfield. Subsequently, petitioner, Housing Council in the Monroe County Area, Inc. [hereinafter, "Housing Council"] requested to be added as a party plaintiff and petitioner, Rochester Home Builders Association, Inc. [hereinafter, Home Builders or "The Association"] sought leave to intervene. The pleadings allege that the individuals, as well as the organizations and their members, are suffering the deprivation of constitutional[3] and statutory[4] rights as a result of the discriminatory and exclusionary zoning ordinance and defendants' implementation of that ordinance.

The District Court for the Western District of New York held that petitioners lacked the requisite standing and failed to state a claim upon which relief could be granted. Accordingly, the District Court dismissed the complaint and denied the requests for intervention. The Second Circuit affirmed solely on the ground that petitioners lack standing. *Warth v. Seldin*, 495 F.2d 1187, 1189 (2d Cir. 1974) (A. 952). This Court then granted plaintiffs'[5] petition for writ of certiorari to review the question of standing.

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[3]Petitioners allege the deprivation of rights secured by the First, Ninth and Fourteenth Amendments to the Constitution of the United States.

[4]Petitioners allege the deprivation of rights secured by the Civil Rights Act of 1866, 42 U.S.C. §1982, the Civil Rights Act of 1870, 42 U.S.C. §1981, and the Civil Rights Act of 1871, 42 U.S.C. §1983.

[5]Unless otherwise indicated, references to "plaintiffs" include the Home Builders and Housing Council.

Penfield's racially discriminatory and exclusionary zoning ordinance and defendants' administration of that law

For purposes of this review, plaintiff's factual allegations must be accepted as true. These allegations reveal that the purpose and effect of Penfield's zoning ordinance,[6] as enacted and administered, are to prohibit nonwhite and nonaffluent persons from residing in the Town of Penfield. (A. 15, 641) The ordinance effectively bars the construction of any multiracial, low and moderate income housing in this suburban town. (A. 508, 943-44) Indeed, experts who have examined the ordinance have concluded:

> "Overall, the residential control aspects of the Penfield zoning ordinance must be classified as highly restrictive — essentially disallowing the construction of any new housing for low and moderate income individuals. Furthermore, in terms of public health, safety and welfare, there is no apparent justification to support the highly restrictive requirements of the residential (housing) provisions of the Penfield zoning ordinance. The zoning ordinance is not based on any current comprehensive plan and its provisions (for large lots, etc.) are neither explained nor justified within the ordinance nor within any planning document (known to these reviewers)." (A. 943, 944) (Footnote omitted.)

Defendants have accomplished this highly restrictive and exclusionary residential control by mandating excessive requirements for house set back, lot size, lot width, minimum floor area and habitable space. (A. 933, 943) In 1972, when this action was commenced. it was impossible to construct a single family dwelling in Penfield in conformity with the ordinance which cost less than $29,115.00 — a price far beyond the reach of minority, low income persons. (A. 936) Pursuant to the zoning law, ninety-eight percent of all vacant land in the Town of Penfield is restricted for construction of such single family

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[6]The Penfield Zoning Ordinance is set forth at A. 36-116.

housing. (A. 937) Only three-tenths of one percent of the vacant land is available for multi-family structures. (A. 939) Yet, even on this limited space, construction of multi-racial, low and moderate income housing is precluded because the zoning ordinance requires excessively low density for the apartment units and other unnecessary costs such as two parking spaces per unit and an enclosed garage for every unit. (A. 938, 939) The construction of townhouses, use of mobile homes, or implementation of planned unit development are alternatives for providing adequate housing for minority and low income families. However, defendants have established a series of rigid dimensional and density requirements which effectively prohibit the use of any of those alternatives. (A. 940-43)

In the posture of the instant case, the conclusion of the experts who have examined the ordinance is uncontradicted and binding upon this Court. Those experts agree that "The Penfield Zoning ordinance is basically an inflexible control mechanism which has the *effect of producing economically and racially stratified housing arrangements* without apparent regard for the housing needs either of its own citizenry or for the citizenry within the larger metropolitan community." (A. 944) (emphasis added). This conclusion is consistent with the findings of the 1970 study of "Housing in Monroe County, New York":

> "Thus, while there is a great need for low and moderate cost housing merely providing a greater number of such units will not necessarily eliminate all of the constraints operating in and distorting the housing market in Monroe County. The community is left with a special category of housing demand: a demand for equal housing opportunities for nonwhites. The complete rejection by suburban communities of all low and moderate income housing is testimony to the severity of the problem of prejudice involved. While many community groups and agencies — as well as individual citizens — have been working for open housing, their various efforts have proved insufficient. Racial prejudice and discrimination must be considered one of the most serious obstacles blocking the construction of low/moderate income housing where it is needed." (A. 276-77).

Equally arbitrary and discriminatory is defendants' administration of the zoning ordinance. Defendants have obstructed any attempts to build multiracial, low and moderate income housing in Penfield (See affidavit of Ann McNabb (A.615-642)) In September, 1969, for example, Penfield Better Homes Corporation, a member of petitioner Housing Council, submitted an application for the rezoning of land in the Town of Penfield for construction of low and moderate income housing. The proposed Highland Circle project was designed to include a complex of cooperative housing units which would be sold to persons earning approximately $5000 to $8000 per year (A.630) This proposal was submitted to the Planning Board only after comprehensive studies had been conducted by the Better Homes Corporation. (A.630) Yet, by resolution of the Penfield Planning Board, this proposal was denied on the grounds that the 1) townhouse construction proposed would constitute an inappropriate use of the land and *would not be consistent with existing character of the neighborhood;* 2) the proposed use would create traffic problems within the area; and 3) the proposed use would create problems of erosion during and after the construction. (A.631) Data previously supplied to the Planning Board directly contradicted the specific reasons for denial of the application (A.631-32) A survey by the County of Monroe, Director of Public Works, revealed that increased traffic would not create any problem with respect to the existing traffic facilities in the area. Furthermore, a thorough review of the proposed apartment site demonstrated that, if certain precautions were taken, construction could proceed in the area without any detrimental effect. The Town Board, however, denied an application by Penfield Better Homes for a public

hearing to reconsider zoning for the Highland Circle project. (A.632)

So too, defendants have frustrated other proposals for Planned Unit Development projects and multiracial low and moderate income housing units. (A.633-42) Ann McNabb, a resident of Penfield, a member of petitioner Metro-Act, and a director of Penfield Better Homes Corp., has been a participant in the submission of project proposals for low and moderate income housing in Penfield and "has an ongoing knowledge" of the various attempts to bring such housing to that Town. (A.617) Based on her personal knowledge she alleges that defendants have (1) delayed action on proposals for inordinate periods of time; (2) denied approval of proposals for arbitrary reasons; (3) failed to provide necessary supporting services for such housing; and (4) amended the zoning ordinance to make the approval of such units virtually impossible. (A.621)

Finally, officials of the Town of Penfield have even threatened members of Rochester Home Builders Associations. It is alleged that

> "One or more officials of the Town of Penfield have attempted to coerce Plaintiffs' members to prevent Plaintiff from bringing this action, and have threatened Plaintiff's members that if this action were brought, Plaintiff's members would be prevented from doing business in the Town of Penfield and/or would be given great difficulty in obtaining necessary approvals, cooperation and/or appropriate treatment by government officials of said town, which would thus prevent them from carrying out their ordinary and necessary business in due course in said town." (A.158-59)

Two controlling and binding facts emerge from plaintiffs' allegations. First, Penfield's zoning ordinance has a racially discriminatory and exclusionary impact.[7] Secondly, defendants' administration of the ordinance perpetuates the economically and racially stratified housing arrangements in that town. Although the Second Circuit was required to accept these alleged facts as true, it, nevertheless, held that plaintiffs do not have standing to seek judicial review of the ordinance and defendants' zoning practices. In so doing, the court ignored the actual physical, economic and social injury suffered by the individual and organizational plaintiffs as a result of the zoning law and defendants' practices and policies in administering the ordinance.

[7] In 1970, only 60 of the 23,782 persons residing in Penfield were black. (A. 470, 549).

Plaintiffs Are Suffering Injury In Fact.

A. Plaintiffs, Ortiz, Broadnax, Reyes and Sinkler, are black or Spanish-surnamed persons of low or moderate income who have been excluded from the Town of Penfield because of their race and low income level. Plaintiff Ortiz, for example, is a Spanish-surnamed American who was dissatisfied with raising his children in the "ghetto environment" which exists in the decaying inner city of Rochester, New York. (A.369) Accordingly, in 1968 he began searching for a home in one of the surrounding suburban towns. Since at that time, and until May, 1972, he was working in the Town of Penfield, he initiated inquiries about renting or buying a home in that suburb. (A.370) However, no multiracial, low and moderate income housing units were available and, thus, petitioner was forced to reside in Wayland, New York, which is forty-two miles from his job in Penfield. Petitioner described his inconvenience and cost as follows:

> "Since I was unable to locate housing near my work in the Town of Penfield (employment dating from my arriving in Rochester in 1966 to May 1972) I have been forced by reason of the exclusionary practices of the Town of Penfield to reside in Wayland, New York, Town of Springwater (1971 through May 1972) forty-two miles from my work in Penfield. I worked five days

a week, eight hours a day at St. Joseph's. I was at work by 7:30 in the morning. Travel one way to the job in Penfield took at least one hour and ten minutes one way - in bad weather, the time involved one way to work was about two hours. The maximum distance from my job if I had been able to live in the Town of Penfield would have involved driving time of no more than twenty minutes to the job at St. Joseph's.

"... there was at least $2.56 involved each day in gasoline costs for my automobile or $12.80 involved in gasoline costs alone for my automobile to and from my work each week. Thus, in costs of gasoline alone, commuting to and from the job in Penfield has cost me $666.00 per year." (A.375-77)

The injury suffered by Ortiz is not limited to the burdensome commuting problems and costs. Rather, as he concluded, "Because our living environments are dictated by laws, practice and policies which prevent us from living where we might wish, we are forced, for example, to accept as a way of life, poor schools for our children, reduced job opportunities, inferior community services and added expenses of reaching employment."

Plaintiffs Broadnax, Reyes and Sinkler and their respective families, have also suffered actual injury as the result of defendants' exclusionary practices and policies. These plaintiffs sought housing in the Town of Penfield (A.417-18, 428, 453), but were excluded because of their race and income levels. (A.421, 431-32, 453) The inner city environment in which they must reside is characterized by dilapidated, substandard housing, uncontrolled violence and insufficient or nonexistent community services. (See affidavits of Broadnax, Reyes and Sinkler (A.404-455)) Clara Broadnax describes the deplorable conditions which she and her children are forced to endure:

"The defects in our apartment include many leaks in the roof, bad wiring, roach infestation, rat and mice infestation, crumbling housing foundation, broken front door, broken hot water heater, etc. There are at least six

holes in the roof. When it rains, the rain comes down through the ceiling and leaks into the living room and kitchen. The rain leaks so heavily that it follows the electric wiring and flows from the light fixtures. The wiring in the house is so old and defective that there is some electrical short in the apartment at least every two weeks which requires our resetting fuses. The house foundation is now crumbling very badly. Since the foundation has started crumbling, there have been mice and rats coming into the house. The mice and rat infestation is now so bad that they come through the heating vents into the rooms of the apartment itself. I have already caught two mice in the children's bed. To have rats and mice infesting the house causes great anxiety among the children. One way that I try to reduce the danger of my children getting bitten is to leave the light on in the bedroom all night. The children are now afraid to go to sleep unless there is a light on in the room." (A.410-12)

As a result of defendants' practices and policies of excluding low income persons and members of minority groups, plaintiffs are being denied their right to raise their children in an integrated environment and obtain the benefits of the improved housing conditions and community services in Penfield. One of the prime concerns of these plaintiffs is the educational disadvantages which their children are forced to suffer. Plaintiff Sinkler states:

"I have sought housing accommodations in the Rochester metropolitan area, including the Town of Penfield - all to no avail because I am a black person of low income. I would like an opportunity to live in the Town of Penfield; I believe I have a right to live in the Town of Penfield and to have access to decent housing in a decent environment.

"One of the most important reasons for my desiring to have an opportunity to live with my family in decent housing in a decent environment is my great concern that my children have an adequate education. I have

already noted that I found the instruction in the public kindergarten and first grade to be so inadequate that I transferred my child to a parochial school. I understand that the public school in my area, School No. 20, has been rated among studies of Rochester City Schools as one of the lowest in terms of effective instruction of students. On the other hand, the Town of Penfield's schools rate high in studies which evaluate area schools. The Town of Penfield by its exclusionary policies, practices and laws has and continues, therefore, to cause me real harm by denying me the opportunity to reside there." (A.453-55)

B. Plaintiffs Warth, Reichert, Vinkey, and Harris suffer actual injury as a direct result of Penfield's exclusionary zoning ordinance and defendants' administration of that law. These plaintiffs are property owners residing in the City of Rochester, New York. Defendants' exclusion of multi-racial low and moderate income housing units forces the City of Rochester to assume the ever increasing burden of providing such housing, much of which is tax abated. As the amount of tax abated property in the City increases, individual property owners and taxpayers, such as plaintiffs, must assume a larger burden of the taxes which are needed to finance essential services. (A.5, 461-62, 474) The tax rate in Rochester, for example, has continually risen from $42.06 per $1,000 assessed valuation in 1959 to $80.95 in 1972. (A.474) This increased financial burden on property owners residing in the City of Rochester is attributable, in part, to the fact that Penfield refuses to provide its "fair share" (A.500) of tax abated, low and moderate income property and thus forces the City and its taxpayers to assume the cost. (A.456-461, 471, 474)

Plaintiffs Warth, Reichert, Vinkey and Harris have such a personal economic stake in the continuance of this litigation as to ensure the requisite concrete adverseness. Each of these plaintiffs is being forced to assume not only the economic hardship caused by spiraling property taxes, but also the social and

environmental problems resulting from the concentration of multi-family, low and moderate income housing units in the urban area. "The effect of Penfield's exclusionary practices which create a concentration of low, moderate housing in the City of Rochester and produce . . . a density crush, also has direct effect on the City of Rochester residents in incidents of crime and provisions for law enforcement." (A.483)

C. Similarly, the organizational plaintiffs are injured by defendants' zoning practices and policies. Metro-Act and its members have suffered direct injury as a result of defendants' practices and policies and, consequently, have a personal stake in the resolution of this matter. Metro-Act, a non-profit corporation, was founded in 1965, after the riots in the inner city of Rochester (A. 181), and is now composed of approximately 350 individual members, many of whom reside in Penfield. (A. 183) One of its primary purposes is to pursue activities designed to secure open housing in the Rochester suburbs. Specifically, Metro-Act, has presented the Town of Penfield with a number of proposals to end the racially exclusionary zoning practices and policies existing in Penfield. (A.193-195) Robert Warth, President of Metro-Act in 1971-72, commented on defendants' unwillingness to consider such proposals:

> "After making such a tremendous effort to discuss the Penfield housing problems with the Town Board officials and meeting with an attitude of unwillingness on the part of the Town of Penfield officials to consider Metro Act's proposals or even to meet and discuss the proposals, Metro Act members had the clear impression that the objective of the Town of Penfield was to delay indefinitely any real meeting with Metro Act members or a real consideration of the Metro Act proposal. Under the circumstances, there was no other alternative than to initiate this lawsuit." (A.195)

As a result of the exclusionary zoning ordinance and defendants' administration of the law, Metro-Act members are suffering direct injury in that they are losing the benefits of

living in an integrated community. As Mr. Warth stated, "Metro-Act is working for open housing in the suburbs because, in part, only by providing maximum choice in housing can Metro-Act members and their children be spared an eventual repeat of ghetto confrontations and riots .... Metro-Act members believe that it is to their own children's benefit to learn early in life to come to healthy terms with different races and ethnic groups." (A.184) Although the injury resulting from the denial of interracial associations is not economic, it nevertheless is such a real and concrete harm, resulting directly from defendants' illegal practices and policies, as to ensure the requisite adverseness.

The Housing Council has standing to assert that its members are adversely affected by defendants' exclusionary and racially discriminatory zoning practices and policies. This Council is a nonprofit corporation which was organized in response to a recommendation in a 1970 study by the Rochester Center for Governmental and Community Research. (A.171) The study was prepared for the Metropolitan Housing Committee, which was appointed jointly by the City and County Managers under authorization from the Rochester City Council and the Monroe County Board of Supervisors. It was recommended in the study that a housing council be established, composed of representatives of relevant agencies, institutions and groups interested in housing, in order to channel the fragmented and uncoordinated housing efforts in the community into meaningful action. Accordingly, the Housing Council's purposes, as stated in its constitution, include the following:

> "The Corporation shall be organized and operated exclusively for the purpose of receiving, maintaining, or administering one or more funds of real or personal property, or both, and using and applying the whole or any part of the income and principal thereof for the charitable purpose of combating community deterioration, eliminating racial and economic prejudice and discrimination in housing, and lessening the burdens of government in the Monroe County area of New York ..." (A.172)

The Housing Council's membership is comprised of seventy-one (71) public and private organizations which are actively participating in efforts to eliminate racial and economic discrimination in the housing market. (A.173) At least seventeen (17) of the charter member groups have been involved, are involved, or hope to be involved directly in the development and construction of low and moderate housing. (A.174) Indeed, at least one such group, Penfield Better Homes Corporation, has been actively attempting to develop multi-racial low and moderate income housing in the Town of Penfield, but has been stymied by its inability to secure the necessary approvals from the defendants in this action. Moreover, several of the charter member groups, including the Monroe County Department of Social Services, the City of Rochester's Department of Urban Renewal and Economic Development, and the Urban Renewal Agency, are government agencies which are directly involved in the production of adequate, multi-racial, low and moderate income housing in the metropolitan Rochester area. (A.174-75) The remaining charter groups include organizations composed of minority persons who are prohibited from living in Penfield. (A.175)

Petitioner, Housing Council, urges that Penfield's restrictive zoning ordinance and defendants' illegal actions are inflicting harm upon its members. Those members who are engaged in the development and construction of low and moderate income housing are suffering economic injury resulting from the loss of profits. The low income minority persons who are represented by Housing Council are forced to endure the same hardships inflicted upon plaintiffs Ortiz, Broadnax, Reyes, and Sinkler. The other members are being thwarted in their efforts to pursue specific activities designed to further the organization's purpose of receiving and administering funds of real or personal property and using the income and principal to combat community

deterioration and eliminate discrimination in the housing market.

Finally, the Rochester Home Builders and its members are injured by defendants' zoning ordinance and practices. This organization is a nonprofit trade association of persons and companies engaged in construction, development, and maintenance of residential housing in the metropolitan Rochester area. Over 110 of its members are engaged directly in the construction of sale and rental housing to the public at large. During the past 15 years, approximately 80% of the private housing units constructed in the metropolitan Rochester area — including the Town of Penfield — were constructed by members of this association. (A. 147)

The Home Builders Association and its members have suffered substantial economic injury as a consequence of defendants' exclusionary zoning practices and policies. Indeed, the uncontradicted affidavit submitted in support of the motion to intervene states that members of the Association have been unable to construct low and moderate income housing in Penfield as a result of the zoning ordinance and defendant's administration of that law:

> "The Rochester Home Builders Association alleges that they have been subject to the same discriminatory and exclusionary zoning practices as alleged in Plaintiffs' Complaint, and as a result thereof have been unable to construct housing and provide same for all of the metropolitan Rochester area population which is entitled to the opportunity to purchase such housing, and that specifically members of the Rochester Home Builders Association have been denied relief from such zoning ordinances permitting them to construct such housing." (Emphasis added (A. 141-42)

The Association specifically alleges that Penfield's restrictive zoning ordinance and defendant's implementation of the law has prevented, and continues to prevent, members of the Association

from developing, selling and renting housing to all the persons in the metropolitan Rochester area. (A. 154-56) As a result, members of this organization are being deprived of substantial business opportunities and profits and have suffered damage in the amount of $750,000.00. (A. 151) Petitioners submit that it is difficult, indeed, to imagine a party with a greater economic stake in the outcome of this litigation than the Home Builders Association and its members.

Petitioners contend that each and every plaintiff in this action is suffering actual injury as a result of Penfield's restrictive zoning ordinance and defendants' practices and policies in administering that law. In these circumstances, each plaintiff has a sufficient stake in the outcome of this litigation to guarantee that the issues will be presented in an adversary context and in a form capable of judicial resolution. Accordingly, petitioners urge that the Second Circuit erred in its determination that plaintiffs lack the requisite standing to seek judicial review.

SUMMARY OF ARGUMENT

1. Petitioners are urging that they, as traditional Hohfeldian parties, have standing under the well established principles which govern the right of a party to seek judicial review. They are not requesting this Court to adopt any novel standing principles.

The standing concept embodies the Article III limitation on the federal courts jurisdictional powers, as well as policy considerations regarding the proper exercise of that power in a tripartite system of government. See e.g. *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 90 S. Ct. 829 (1970); *Flast v. Cohen*, 392 U.S. 83, 88 S. Ct. 1942 (1968). The "gist" of the constitutional restriction is whether plaintiffs have alleged such a personal stake in the outcome as to assure that the issues will be presented in an

adversary context and in a form historically viewed as capable of judicial resolution. *Flast v. Cohen*, supra; *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691 (1962). In order to satisfy the constitutionally mandated "case" or "controversy" requirement, plaintiffs must allege injury in fact, economic or otherwise, flowing directly from the illegal action. *Association of Data Processing Service Organizations, Inc. v. Camp*, supra.

Plaintiffs contend that the material allegations, which must be taken as admitted, establish that each petitioner is suffering injury in fact as a result of defendants' racially discriminatory and exclusionary zoning ordinance and zoning practices. Moreover, plaintiffs submit that the policy considerations demand, rather than bar, the exercise of judicial review. Indeed, the "irreplaceable value" of the federal court's power of judicial review "lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government actions." *United States v. Richardson*, —— U.S. ——, ——, 94 S. Ct. 2940, 2954 (1974) (Mr. Justice Powell, concurring).

2. Plaintiffs Ortiz, Broadnax, Reyes and Sinkler are low income, minority persons who have sought housing in Penfield but have been excluded from living in that Town because of their race and income level. As a result, they are forced to live in the inner city of Rochester which is characterized by dilapidated, substandard housing and uncontrolled violence. So too, their children are required to attend the inferior city schools. Although this Court has not previously addressed the issue, numerous lower courts have held that low income minority persons have standing to seek judicial review of racially discriminatory and exclusionary zoning practices and policies. See, e.g. *Park View Heights Corporation v. City of Black Jack*, 467 F. 2d 1208 (8th Cir 1972); *Crow v. Brown*, 457 F. 2d 788 (5th Cir. 1972), affirming 332 F. Supp. 382 (N.D. Ga. 1971). The injury which these individuals suffer is certainly such

concrete harm as to ensure that the dispute will be presented in an adversary context. Moreover, it is manifest that there is a "logical nexus" between these plaintiffs' injury and the claims sought to be adjudicated. *Flast v. Cohen*, supra at 102, 88 S. Ct. at 1953. Such inquiries into the nexus are "essential to assure that the litigant] is a proper and appropriate party to invoke federal judicial power" Id. Here, it is beyond doubt that low income minority persons, who are the victims of defendants' discriminatory practices, are the proper parties to such judicial review. To hold otherwise would undermine this nation's commitment to the goal of a decent home and a suitable living environment for every family and would hasten the day when urban centers, such as Rochester, will become black segregated cities surrounded by solid white suburban perimeters.

3. Plaintiffs Warth, Reichert, Vinkey and Harris are property owners residing in the City of Rochester which is adjacent to the Town of Penfield. They allege that defendants' refusal to permit construction of low and moderate income housing forces the City of Rochester to provide such housing, which is tax abated. As a result, property owners, such as plaintiffs, are forced to pay increased property taxes which are necessary to finance essential municipal services. Such economic injury assures that these plaintiffs have a personal stake in the outcome of the litigation. Indeed, the injury, here, is similar to the economic harm suffered by plaintiffs in *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 678, 93 S. Ct. 2405, 2411 (1973). Standing is not to be denied because the injury is slight or because many persons suffer the same harm. See *United States v. SCRAP*, supra; Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601 (1968). Moreover, the line of causation between plaintiffs' injury and defendants' illegal acts is more direct than in *Barlow v. Collins*, 397 U.S. 159, 90 S. Ct. 832 (1970) and *United States v. SCRAP*, supra. Finally, the fact that the white

property owners are not themselves the immediate victims of the discrimination does not deprive plaintiffs of standing. See *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 90 S. Ct. 400 (1969); *Buchanan v. Warley*, 245 U.S. 60, 38 S. Ct. 16 (1917). Since plaintiffs have established economic injury resulting from defendants' discriminatory and exclusionary practices and policies, they are reliable private attorneys general to litigate the issue of public interest in the case. *Sierra Club v. Riortas*, 405 U.S. 727, 737, 92 S. Ct. 1361, 1367 (1972); *Association of Data Processing Service Organizations, Inc. v. Camp*, supra at 154, 90 S. Ct. at 830; *Scripps-Howard Radio v. Federal Communications Commission*, 316 U.S. 4, 62 S. Ct. 875 (1942).

4. Organizational plaintiffs have standing to seek judicial review of policies and practices which cause injury to the organization or its members. *United States v. SCRAP*, supra; *Sierra Club v. Morton*, supra; *NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328 (1963).

Metro-Act and its members are suffering injury in fact flowing directly from defendants' zoning practices and policies. The organization and its members are being forced to pay increased property taxes as a result of defendants' illegal acts. Moreover, the Metro-Act members who reside in Penfield are being denied the important benefits derived from interracial associations and living in an integrated community. *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 93 S. Ct. 364 (1972). Although the denial of such benefits is not economic injury it nevertheless assures that the dispute will be presented in an adversary context and satisfies the case or controversy requirement. See *United States v. SCRAP*, supra, at 686, 93 S. Ct. at 2415; *Sierra Club v. Morton*, supra at 734, 92 S. Ct. at 1366. Additionally, it is clear that the interest which Metro-Act seeks to protect — the right of its members to receive the benefit of interracial associations — is within the zone of interest sought

to be protected by the First Amendment. *Healy v. James*, 408 U.S. 169, 92 S. Ct. 2338 (1972). Furthermore, there is a direct nexus between the harm to Metro-Act's members and defendants' discriminatory and exclusionary zoning ordinance and practices. "It should be obvious that the exclusion of any person or group — all Negro, all oriental, or all white — . . . infringes upon the freedom of the individual to associate as he chooses." *Gilmore v. City of Montgomery*, —— U.S. ——, ——, 94 S. Ct. 2416, 2427 (1974).

Housing Council also has standing to represent its members in this proceeding for judicial review. The organization's members include seventeen groups which have been, or will be, involved directly in the development of low and moderate income housing. One group, Penfield Better Homes Corporation, submitted a proposal to build such housing in Penfield but was unable to obtain defendants' approval. These members are suffering the loss of profits as a result of defendants' practices and policies. Such economic injury is sufficient to satisfy the case or controversy requirement. *Association of Data Processing Organizations, Inc. v. Camp*, supra, at 151, 90 S. Ct. at 829. The organization also includes charter member groups which are comprised primarily of low and moderate income persons who are excluded from Penfield. These persons suffer the same form of injury which is inflicted upon plaintiffs Ortiz, Broadnax, Reyes and Sinkler.

There can be little doubt but that Housing Council members are suffering such injury as to ensure the requisite adverseness. So too, the interest which the organization seeks to represent — the right to equal housing opportunity — is within the zone of interests sought to be protected by the Constitution and the Civil Rights Acts, 42 U.S.C. §1981-1983. See, e.g., *Tillman v. Wheaton-Haven Recreation Association*, 410 U.S. 437, 93 S. Ct. 1090 (1973); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S. Ct. 2186 (1968); *Buchanan v. Warley*, supra. In these

circumstances, the Housing Council may represent its members in the instant action.

Finally, the Home Builders Association has standing to represent its members who have been denied substantial business opportunities and profits as a result of defendants' practices and policies. Such economic injury gives the Association a stake in the outcome of this litigation. See, e.g. *Barlow v. Collins*, supra; *Association of Data Processing Service Organizations, Inc. v. Camp*, supra; *Hardin v. Kentucky Utilities Comapny*, 390 U.S. 1, 88 S. Ct. 651 (1968). Additionally, it is well established that a trade association, such as Home Builders, has standing to represent its injured members. *American Motor Freight Traffic Association v. United States*, 372 U.S. 246, 83 S. Ct. 688 (1963).

Equally clear is the fact that since the Home Builders Association has properly invoked judicial review, it may assert the public interest in support of its claim. *Trafficante v. Metropolitan Life Insurance Company*, supra at 211, 93 S. Ct. at 367; *Sierra Club v. Morton*, supra at 737, 92 S. Ct. at 1362. To hold otherwise would frustrate the congressionally mandated, and judicially enforceable, guarantee that members of minority groups have the "freedom to buy whatever a white man can buy [and] the right to live wherever a white man can live." *Jones v. Alfred H. Mayer Co.*, supra at 443, 88 S. Ct. at 2205.

5. Plaintiffs urge that the standing doctrine in this civil rights case must be construed at least as broadly as it has been interpreted in other cases, including those involving environmental matters. The denial of standing here would undermine this nation's commitment to the eradication of racism and would hasten the "establishment of two societies: one predominately white and located in the suburbs, . . . and one largely Negro located in central cities."[8]

[8]Report of the National Advisory Commission on Civil Disorders 220 (1968).

ARGUMENT

Plaintiffs' have standing to seek judicial review of Penfield's racially discriminatory and exclusionary zoning ordinance and defendants' zoning practices which deprive plaintiffs of constitutional and statutory rights and cause them to suffer economic damage, physical and emotional hardship, and loss of the social benefits of living in an integrated community.

It must be noted at the outset that plaintiffs are not requesting this Court to depart from any of its established standing principles. Plaintiffs do not contend that they have standing simply by virtue of their status as taxpayers[9] or citizens.[10] Nor is it suggested that standing is conferred merely because plaintiffs are interested parties who are willing to pay the substantial costs of the litigation.[11] Rather, plaintiffs are urging that they, as traditional Hohfeldian[12] parties, have standing under the well established principles which govern the right of a party to seek judicial review.

Although standing has been called one of "the most amorphous [concepts] in the entire domain of the law,'"[13] it is now manifest that the "fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." *Flast*

[9]See *United States v. Richardson*, —— U.S. ——, 94 S.Ct. 2940 (1974).

[10]See *Schlesinger v. Reservists Committee to Stop the War*, —— U.S. ——, 94 S.Ct. 2925 (1974).

[11]See Scott, Standing in the Supreme Court — A Functional Analysis, 86 Harv. L. Rev. 645, 676 (1973).

[12]See Jaffe, The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff, 116 U. Pa. L. Rev. 1033 (1968).

[13]*Flast v. Cohen*, 392 U.S. 83, 99, 88 S.Ct. 1942, 1952 (1968) (quoting, Hearings on S.2097, 89th Cong., 2d Sess. 465, 498 (1966)).

v. Cohen, 392 U.S. 83, 99, 88 S. Ct. 1942, 1952 (1968). Moreover, it is clear that the standing concept embodies both constitutional limitations on the federal court's jurisdictional powers and policy considerations regarding the exercise of such power. See, e.g., *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 154, 90 S. Ct. 827, 830 (1970); *Flast v. Cohen*, supra. Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601 (1968).

The "gist" of the constitutional restriction on the court's judicial power to review only "cases" or "controversies"[14] is whether plaintiffs have

> ". . . alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

Baker v. Carr, 369 U.S. 186, 204, 82 S. Ct. 691, 703 (1962). As this Court explained in *Flast v. Cohen*, supra at 101, 88 S. Ct. at 1953, "in terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution."

To satisfy the case or controversy requirement, plaintiffs must allege "some threatened or actual injury resulting from the putatively illegal action." *Linda S. v. Richard D.*, 410 U.S. 614, 617, 93 S. Ct. 1146, 1148 (1973). Indeed, the initial inquiry is "whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise." *Association of Data Processing Service Organizations, Inc. v. Camp*, supra at 152, 90 S. Ct. at 829.

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[14] U.S. Const. Art. III §2.

The nonconstitutional policy considerations[15] have been expressed in various forms. See *Association of Data Processing Service Organizations, Inc. v. Camp*, supra at 153-154, 90 S. Ct. at 830 ("zone of interest" test); *Flast v. Cohen*, supra at 102, 88 S. Ct. at 1954 ("nexus" test); *Barrows v. Jackson*, 346 U.S. 249, 255, 73 S. Ct. 1031, 1034 (1953) (rule of self-restraint). However, underlying each such test is a policy consideration regarding the federal court's proper role in a tripartite system of government.

Plaintiffs submit that they have satisfied both the constitutional and nonconstitutional standing requirments. Each party has alleged[16] injury in fact resulting from Penfield's discriminatory and exclusionary zoning ordinance and defendants' administration of that law. It is this injury, economic and otherwise, which ensures that the issues will be presented in an adversary context and in a form capable of judicial resolution. Moreover, the policy considerations here demand, rather than bar, the exercise of judicial review. The federal court's proper role necessarily includes the power to review practices and policies which have a racially discriminatory and exclusionary purpose and effect. Indeed, as Mr. Justice Powell said regarding the power of judicial review:

> "The irreplaceable value of the power articulated by Chief Justice Marshall lies in the *protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action.* It is this role not some amorphous, general supervision of the operations

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[15] But see *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 159, 167, 90 S.Ct. 827, 838 (Mr. Justice Brennan and Mr. Justice White, concurring and dissenting); Davis, The Liberalized Law of Standing, 37 U.Chi.L.Rev. 450 (1974).

[16] In the procedural posture of this case, these allegations must be taken as admitted by defendants. *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 1849 (1969) ("For the purposes of a motion to dismiss, the material allegations of the complaint are taken as admitted.")

> of government, that has maintained public esteem for the federal courts and has permitted the peaceful coexistence of the countermajoritarian implications of judicial review and the democratic principles upon which our Federal Government in the final analysis rests."

United States v. Richardson, —— U.S.——, ——, 94 S. Ct. 2940, 2954 (1974) (concurring opinion) (emphasis added).

A. *Low income minority persons have standing to seek judicial review of defendants' discriminatory and exclusionary zoning ordinance and practices which exclude them from residing in Penfield and cause them to suffer physical and emotional hardship.*

Plaintiffs Ortiz, Broadnax, Reyes, and Sinkler have standing to challenge defendants' racially discriminatory and exclusionary practices and policies. These individuals are minority, low income persons who have sought housing in the Town of Penfield but have been excluded because of their race and income levels. Plaintiff Ortiz, as a direct result of defendants' discriminatory and exclusionary zoning practices and policies, was forced to live forty-two miles from his place of work in Penfield and suffer burdensome commuting problems and costs. Plaintiffs Broadnax, Reyes, and Sinkler have also been excluded from living in Penfield and have been forced to reside in the decaying inner city of Rochester, New York. Their living environment is characterized by dilapidated, substandard housing, uncontrolled violence, and insufficient or nonexistent community services. (A. 404-455) Plaintiffs' children are forced to attend the inferior schools in the City of Rochester. Indeed, one of Rosa Sinkler's primary reasons for desiring to live with her family in Penfield is the "great concern that [her] children have an adequate education." (A. 454) Plaintiff Sinkler states that

> "the public school in my area, School No. 20, has been rated among studies of Rochester City Schools as one of the lowest in terms of effective instruction of students. On the other hand, the Town of Penfield's schools rate high in studies which evaluate area schools." (A. 454)

Finally, these individuals are suffering the real harm of being unable to raise their children in an integrated community and obtain the benefits of interracial associations.

Manifestly, Andelino Ortiz, Clara Broadnax, Angelea Reyes, and Rosa Sinkler are not simply "concerned bystanders." *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 687, 93 S. Ct. 2405, 2416 (1973). Rather, they are individuals who, in their daily lives, suffer physical and emotional hardships as a direct consequence of defendants' refusal to permit low income minority persons to reside in Penfield.

Nevertheless, the Court of Appeals for the Second Circuit held that plaintiffs' injury is 'too abstract, conjectural and hypothetical to establish an Article III case or controversy." *Warth v. Seldin*, 495 F.2d 1187, 1193 (2d Cir. 1974) (A. 963) In so doing, the court erroneously relied upon *O'Shea v. Littleton*, 414 U.S. 488, 94 S. Ct. 669 (1974), which is readily distinguishable from the facts in the instant case. There, the "sole allegations were that defendants engaged in activities which deprived plaintiffs of constitutional rights." Id at 495, 94 S. Ct. at 676. This court held that there was no case or controversy since "[n]one of the named plaintiffs is identified as having himself suffered any injury in the manner specified." Id.

The instant case is in direct contrast to *O'Shea*. Unlike in *O'Shea*, plaintiffs allege that they are *personally* suffering the harm which results from defendants' exclusion of low income minority persons. The complaint and affidavits detail the daily injury which plaintiffs are forced to endure. Plaintiffs' specific allegations regarding their own deplorable living conditions and

their children's inferior education are neither conclusory nor abstract. In these circumstances, this Court's determination in *O'Shea* has no bearing whatsoever on the standing of plaintiffs to seek judicial review.[17]

Plaintiffs submit that they have alleged such injury in fact as to ensure that the dispute will be presented in an adversary context and in a form capable of judicial resolution. Indeed, although this Court has not previously addressed the issue, numberous lower courts have held that minority, low income persons have standing to seek judicial review of racially discriminatory and exclusionary zoning practices and policies. See, e.g., *Park View Heights Corporation v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972); *Crow v. Brown*, 457 F.2d 788 (5th Cir. 1972), affirming, 332 F. Supp. 382 (N.D. Ga. 1971); *Kennedy Park Homes Association, Inc. v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010, 91 S. Ct. 1256 (1971); *Dailey v. City of Lawton*, 425 F.2d 1037 (10th Cir. 1970). Cf. *United Farmworkers of Florida Housing Project, Inc., v. City of Delray Beach*, 493 F.2d 799 (5th Cir. 1974) (individual farmworkers have standing to challenge actions which have stymied efforts to build federally assisted low income housing and which have a racially discriminatory effect); *Shannon v. United States Department of Housing and Urban Development*, 436 F.2d 809 (3d Cir. 1970) (standing of parties to challenge site location of public housing).

The Second Circuit, however, attempted to distinguish these and other cases on the ground that they involved a particular housing proposal or project. The court stated, "Without deciding whether we approve these holdings, we note the standing of potential residents in these cases presents an issue very different from the one presented here. The focusing of the

[17] This Court's decision in *O'Shea v. Littleton*, 414 U.S. 488, 94 S.Ct. 669, (1974), is also inapposite insofar as it is based upon the Court's reluctance to interfere with a state's administration of its criminal laws. Id. at 499, 94 S.Ct. at 677.

controversy in a particular project assures 'concrete adverseness.'" *Warth v. Seldin*, supra at 1192 (A. 961)

Plaintiffs contend that such a distinction ignores the undisputed[18] factual allegations as well as standing principles enunciated by this Court. The allegations reveal that Penfield's zoning ordinance prohibits multi-racial low and moderate income housing units and that public officials have obstructed any attempts to build such housing.[19] Members of the Home Builders Association have been unable to obtain the necessary relief from the zoning law to enable them to construct such housing units. (A. 154-55) Some members of the Association have even been threatened by Town officials. (A. 158-59) Metro-Act's proposals for revision of the zoning ordinance have been ignored by defendants. (A. 193-95) Specific project proposals, including the "Highland Circle Project," have been stymied by defendants' practice of delaying action on proposals, arbitrarily denying approval, failing to provide necessary support services, and amending the zoning ordinance to make approval virtually impossible. (A. 621) In these circumstances, it would be anomolous, indeed, to deny plaintiffs standing to challenge Penfield's refusal to permit construction of low and moderate income housing on the ground that no such housing is presently being constructed in that Town.

Moreover, contrary to the suggestion of the Court of Appeals, it is the injury in fact to the plaintiffs, rather than the existence or nonexistence of a project proposal, which assures concrete adverseness. See *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152, 90 S. Ct. 827, 829 (1970); *Flast v. Cohen*, 392 U.S. 83, 99, 88 S. Ct. 1942, 1952 (1968). The fact that a particular project is presently

[18] See note 16, supra.

[19] See, generally, affidavits of Kling, Taddiken and Fanley (A. 925-947) and McNabb (A. 615-642).

under consideration might ease plaintiffs' evidentiary burden of establishing, at the trial, the causal connection between defendants' actions and plaintiffs' injury. However, it is not determinative of the initial inquiry — whether plaintiffs have alleged "some threatened or actual injury resulting from the putatively illegal actions." *Linda S. v. Richard D.*, 410 U.S. 614, 617, 93 S. Ct. 1146, 1148 (1973).

Accordingly, plaintiffs Ortiz, Broadnax, Reyes, and Sinkler have alleged sufficient injury in fact to satisfy the case or controversy requirement. Moreover, it is evident that there is a "logical nexus" between plaintiffs' injury and the claims sought to be adjudicated. In *Flast v. Cohen*, supra at 102, 88 S. Ct. at 1953, this Court stated that "inquiries into the nexus between the status asserted by the litigant and the claim he presents are essential to assure that he is a proper and appropriate party to invoke federal judicial power." Here, it is beyond doubt that plaintiffs are the victims of defendants' discriminatory practices and policies and, as such, are proper parties to request judicial review. As Chief Justice Marshall said in *Marbury v. Madison*, 1 Cranch 137, 163 (1803):

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."

This nation is committed to the "goal of a decent home and a suitable living environment for every American family. . . ." 42 U.S.C. §1441. See also, *Thorpe v. Housing Authority of Durham*, 393 U.S. 268, 261, 89 S. Ct. 518, 525 (1969). Congress recently reaffirmed this commitment in the Housing and Community Development Act of 1974 which is directed toward the following objectives:

> "the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income; and . . .
>
> * * * *

> the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income; . . ."

Act of August 22, 1974, Pub L. No. 93-383 §101(c).

To deny standing to plaintiffs Ortiz, Broadnax, Reyes and Sinkler would impede achievement of the national housing policy and would hasten the day when the City of Rochester will become a black, segregated city surrounded by a solid white suburban perimeter.

B. ***Property owners who have suffered economic injury as a result of the zoning ordinance and defendants' administration of that law have standing to seek judicial review.***

Plaintiffs Warth, Reichert, Vinkey and Harris are property owners residing in the City of Rochester, New York, which is adjacent to the Town of Penfield. These plaintiffs are suffering economic injury as a direct result of Penfield's racially discriminatory and exclusionary zoning ordinance and defendants' administration of that law. They allege that defendants' refusal to permit construction of low and moderate income housing forces the City of Rochester to provide such housing, much of which is tax abated. As the amount of tax abated property increases, city property owners, such as plaintiffs, are forced to assume a larger burden of the taxes which are necessary to finance essential municipal services. The spiraling city property taxes are partly attributable to the fact that Penfield refuses to provide multi-racial low and moderate income housing[20] and, thus, forces the City and its residents to

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[20]Penfield has no property with tax abatements attributable to housing. (A. 471)

assume the cost. See Affidavit of Warth, Reichert, Vinkey, and Harris (A.456-485).

Plaintiffs are also being subjected to the social and environmental harm resulting from the concentration of low and moderate income housing units in the City. Indeed, the concentration of low and moderate income housing increases the "density crush" which has a direct effect on "incidents of crime and provision for law enforcement." (A.483)

The Second Circuit, however, held that the property owners lack standing to challenge defendants' practices and policies. *Warth v. Seldin*, supra at 1190-91 (A.958, 959) The court based its determination on the discussion of "taxpayers" standing in *Flast v. Cohen*, 392 U.S. 83, 88 S.Ct. 1942 (1968), *Doremus v. Board of Education*, 342 U.S. 429, 72 S.Ct. 394 (1952), and *Frothingham v. Mellon*, 262 U.S. 447, 43 S.Ct. 597 (1923). Plaintiffs submit that these decisions, as well as the more recent taxpayer cases,[21] are inapposite. As Justice Harlan stated, the essential inquiry in the taxpayer lawsuits is "whether taxpayers *qua* taxpayers may, in suits in which they do not contest the validity of their previous or existing tax obligations, challenge the constitutionality of the uses for which Congress has authorized the expenditure of public funds." *Flast v. Cohen*, supra at 117, 88 S.Ct. at 1961 (dissenting opinion).

Here, the issue is "fundamentally different." Id. Plaintiffs are not seeking to litigate this action as taxpayers contesting an expenditure of public funds. Rather, plaintiffs are suing as property owners who are suffering economic injury as a result of Penfield's zoning ordinance and defendants' zoning practices. The fact that this injury takes the form of increased property tax liabilities does not convert this litigation into a "taxpayer" suit. Indeed, plaintiffs are seeking to "vindicate interests that are personal and proprietary. The wrongs alleged and the relief

[21] *United States v. Richardson*, —— U.S. ——, 94 S.Ct. 2940 (1974); *Schlesinger v. Reservists Committee to Stop the War*, —— U.S. ——, 94 S.Ct. 2925 (1974).

sought . . . are unmistakably private, only secondarily are [plaintiffs'] interests representative of those of the general public." Id.

Plaintiffs' submit that their injury is identical to the harm suffered by petitioners in *United States v. Students Challenging Regulatory Agency Procedures* (*SCRAP*), 412 U.S. 669, 93 S.Ct. 2405 (1973). There, the case and controversy requirement was satisfied by allegations that members of various environmental groups "were forced to pay increased taxes" as a result of the freight rate structure issued by the Interstate Commerce Commission. Id. at 678, 93 S.Ct. at 2411. Similarly, here, standing is conferred upon plaintiffs by virtue of the fact that they must pay increased property taxes as a result of defendants' zoning practices and policies.

Standing should not be denied merely because many property owners suffer the same injury. As this Court said in *United States v. SCRAP*, supra at 688, 93 S.Ct. at 2416,

> "To deny standing to persons who are in fact injured simply because many others are also injured would mean that the most injurious and underspread government actions could be questioned by nobody. We cannot accept that conclusion."

Moreover, standing should not be denied on the ground that the injury to the property owners may be slight. Professor Davis has written that "an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601, 613 (1968). So too, this Court has held:

> "Injury in fact reflects the statutory requirement that a person be adversely affected or aggrieved and it serves to distinguish a person with a direct stake in the outcome of a litigation - even though small - from a person with a mere interest in the problem. We have allowed important interests to be vindicated by plaintiffs with no

> more at stake in the outcome of an action than a fraction of a vote, see Baker v. Carr; 369 U.S. 186. 82 S.Ct. 691, 7 L.Ed.2d 663; a five dollar fine and costs, see McGowan v. Maryland, 366 U.S. 420 81 S.Ct. 1101, 6 L.Ed.2d 393; and a $1.50 poll tax, Harper v. Virginia Bd. of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169."

United States v. SCRAP, supra at 689 n.14, 93 S.Ct. at 2417 N.14.

Plaintiffs urge that this Court also reject the notion that the line of causation between the injury and the illegal acts is too attenuated. *Warth v. Seldin*, supra at 1191. (A.959) The line of causation is no more indirect than in *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832 (1970), and *United States v. SCRAP*, supra, where the Court found standing. In *Barlow*, tenant farmers eligible for payments under the upland cotton programs challenged an amended regulation issued by the Secretary of Agriculture. The regulation permitted tenant farmers to assign subsidy payments to secure " 'the payment of cash rent for land used (for planting, cultivating, or harvesting)' " Id. at 161-162, 90 S.Ct. at 835. The tenant farmers alleged that the amended regulations provided landlords with an opportunity to demand that the tenants assign the upland cotton program benefits as a condition for securing a lease to work the land. Id. at 162-63, 90 S.Ct. at 835. As a result,

> "the tenants are required to obtain financing of all their other farm needs - groceries, clothing, tools, and the like - from the landlord as well, since prior to harvesting the crop they lack cash and any source of credit other than the landlord. He, in turn, the complaint alleges, levies such high prices and rates of interest on these supplies that the tenants' crop profits are consumed each year in debt payments. Petitioners contend that they can attain a modest measure of economic independence if they are able to use their advance subsidy payments *** (to) form cooperatives to buy (supplies) at wholesale and reasonable prices in lieu of the excessive prices

> demanded by [the landlord] of *** captive consumers with no funds to purchase elsewhere. Thus, petitioners allege that they suffer injury in fact from the operation of the amended regulation."

Id. at 163, 90 S.Ct. at 836.

Similarly, in *United States v. SCRAP*, supra, this Court was asked to follow an "attenuated line of causation to the essential injury." Id. at 688, 93 S.Ct. at 2416. There, the challenged freight rate increase allegedly would cause "increased use of nonrecyclable commodities as compared to recyclable goods, thus resulting in the need to use more natural resources to produce such goods, some of which resources might be taken from the Washington area, and resulting in more refuse that might be discarded in national parks in the Washington area." Id.

Here, the line of causation is certainly more direct than in either *SCRAP* or *Barlow*. Plaintiffs allege that defendants' exclusion of low and moderate income housing units forces the City to provide such housing for the entire metropolitan area. Since much of this housing is tax exempt, City property owners and taxpayers, such as plaintiffs, are required to pay increased taxes to support essential municipal services. If defendants believe that such allegations are in fact untrue, they "should have moved for summary judgment on the standing issue and demonstrated to the District Court that the allegations were sham and raised no genuine issue of fact. We cannot say on these pleadings that the [plaintiffs] could not prove their allegations which, if proved, would place them squarely among those persons injured in fact . . . and entitled . . . to seek review." *United States v. SCRAP*, supra at 689, 93 S.Ct. at 2417.

Accordingly, plaintiff property owners contend that they are traditional Hohfeldian parties who are injured in fact by Penfield's ordinance and defendants' practices. It is submitted that, for standing purposes, the principles enunciated in

Buchanan v. Warley, 245 U.S. 60, 38 S.Ct. 16 (1917), are equally applicable to the instant action.[22] There, a white property owner and a black purchaser entered into a contract for the sale of real estate. The purchaser, however, refused to comply with the agreement because a zoning ordinance prohibited black persons from residing in the area in which the property was located. Subsequently, the white property owner sued for specific performance alleging that the zoning ordinance was unconstitutional and unlawful under the Civil Rights Acts of 1866[23] and 1870.[24] Justice Day, writing for a unanimous Court, concluded that the white property owner, who obviously suffered economic injury as a result of the discriminatory zoning ordinance, had standing to challenge the law.

Here, also, white property owners are challenging a racially restrictive zoning ordinance as unconstitutional and unlawful under the Civil Rights Acts of 1866 and 1870. Penfield's zoning law and defendants' practices have the same discriminatory and exclusionary effect as the challenged ordinance in *Buchanan*. Similarly, as in *Buchanan*, plaintiffs have suffered such economic injury as to ensure that the challenge to the ordinance will be presented in an adversary context and in a form historically capable of judicial resolution.

Finally, here, as in *Buchanan*, the fact that the white property owners are not themselves the immediate victims of the discrimination does not deprive plaintiffs of standing to challenge the exclusionary ordinance and practices. See also *Tillman v. Wheaton-Haven Recreation Association*, 410 U.S.

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[22]The continued vitality of *Buchanan v. Warley*, 245 U.S. 60, 38 S.Ct. 16 (1917), was recently confirmed by this Court in *Village of Belle Terre v. Borass*, 416 U.S. 1, 6, 94 S.Ct. 1536, 1539 (1974) ("if the ordinance segregated an area only for one race, it would immediately be suspect under the reasoning of *Buchanan*. . . .)"

[23]42 U.S.C. §1982.

[24]42 U.S.C. §1981.

437, 93 S.Ct. 1090 (1973); *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 90 S.Ct. 400 (1969). Plaintiffs have established economic injury resulting from defendants' practices and policies and consequently are "reliable private attorney[s] general to litigate the issues of the public interest in the present case." *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 154, 90 S.Ct. 827, 830 (1970). As the Court recently said in *Sierra Club v. Morton*, 405 U.S. 727, 737, 92 S.Ct. 1361, 1367 (1972), "the fact of economic injury is what gives a person standing to seek judicial review . . . , but once review is properly invoked, that person may argue the public interest in support of his claim." Accord, *Scripps-Howard Radio v. Federal Communications Commission*, 316 U.S. 4, 62 S.Ct. 875 (1942); *Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U.S. 470, 60 S.Ct. 693 (1940).

In these circumstances, it must be concluded that plaintiffs-property owners are suffering injury in fact as a result of defendants' discriminatory and exclusionary zoning ordinance and practices and have standing to request judicial review.

C. *Organizational plaintiffs have standing to seek judicial review of defendants' discriminatory and exclusionary zoning ordinance and zoning practices which cause injury to the organizations or their members.*

It is now well established that an organization has standing to seek judicial review of policies and practices which cause injury to the organization or its members. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 93 S. Ct. 2405 (1973); *Sierra Club v. Morton*, 405 U.S. 727, 92 S. Ct. 1361 (1972); *N.A.A.C.P. v. Button*, 371 U.S. 415, 83 S. Ct. 328 (1963); *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 78 S. Ct. 1163 (1958). As this Court said in *Sierra Club v. Morton*, supra at 739, 92 S. Ct. at 1368,

> "It is clear that an organization whose members are injured may represent those members in an proceeding for judicial review."

The organizational plaintiffs here contend that they or their members are suffering injury in fact as a result of Penfield's zoning ordinance and defendants' practices. Accordingly, these organizations have standing to invoke judicial review.

1. *Metro-Act and its members are suffering economic injury, personal hardship, and deprivation of the benefits of interracial associations.*

Metro-Act is a nonprofit Corporation composed of approximately 350 individual members who live in various sections of the metropolitan Rochester area, including the Town of Penfield (A. 183) It is alleged that "one effort of the corporation has been to inquire into the reasons for the critical housing shortage from low and moderate income persons in the Rochester area and to urge action on the part of citizens to alleviate the general housing shortage for low and moderate income persons." (A. 8-9) Specifically, Metro-Act has submitted to defendants various proposals to end Penfield's exclusionary zoning practices and policies. (A. 193-95) However, defendants have ignored Metro-Act's efforts and have indefinitely delayed any meaningful consideration of the proposals. (A. 195)

It is not suggested that Metro-Act has standing simply by virtue of its special interest in housing matters. See *Warth v. Seldin*, supra at 1193. (A. 963) Rather, Metro-Act contends that the organization and its members are suffering injury in fact as a result of the challenged zoning ordinance and defendants' administration of that law.

Initially, Metro-Act alleges that the organization, itself, and those members who reside in the City of Rochester are paying "greater and/or additional real estate taxes . . . than they would have had the defendants not acted as alleged." (A. 30) This

injury, which is identical to the injury suffered by the named plaintiffs Warth, Vinkey, Harris, and Reichert, is both real and concrete. (See discussion, supra at 31) Manifestly, such economic injury to the organization and its members ensures that Metro-Act will pursue this litigation in an adversary context and in a form capable of judicial resolution.

Additionally, Metro-Act contends that it has standing to represent those members who reside in the Town of Penfield and are suffering injury in fact due to the loss of social benefits resulting from interracial associations and living in an integrated community. It is alleged that "Metro-Act members believe that it is to their own children's benefit to learn early in life to come to terms with different races and ethnic groups." (A. 184) However, defendants' racially discriminatory and exclusionary practices and policies prevent Metro-Act members and their children from receiving the important benefits derived from living in an integrated community. Although such injury is not economic, it is real harm flowing directly from defendants' actions. Moreover, as this Court said in *United States v. SCRAP*, supra at 686, 93 S. Ct. at 2415, "In interpreting 'injury in fact' we made it clear that standing was not confined to those who could show 'economic harm.'" Accord, *Sierra Club v. Morton*, supra at 734, 92 S. Ct. at 1366.

Recently, this Court held that the loss of benefits from interracial associations is the type of harm which can ensure concrete adverseness and satisfy the case or controversy requirement. In *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 93 S. Ct. 364 (1972), black and white plaintiffs alleged that they had been injured in that

> "(1) they had lost the social benefits of living in an integrated community; (2) they had missed business and professional advantages which would have accrued if they had lived with members of minority groups; (3) they had suffered embarrassment and economic damage in social, business, and professional activities

> from being 'stigmatized' as residents of a 'white ghetto'."

Id. at 208, 93 S. Ct. at 366. This Court held that plaintiffs, indeed, had been injured by the "loss of important benefits from interracial associations" and, thus, had standing to challenge the discriminatory housing practices. Id. at 210, 93 S. Ct. at 367. In so doing, this Court said:

> "The dispute tendered by this complaint is presented in an adversary context. *Flast v. Cohen*, 392 U.S. 83, 101, 88 S. Ct. 1942, 1953, 20 L.Ed. 947. Injury is alleged with particularity, so there is not present the abstract question raising problems under Art. III of the Constitution. The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, 'the whole community,' 114 Cong. Rec. 2706, and as Senator Mondale who drafted §810(a) said, the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living quarters.' 114 Cong. Rec. 3472."

Id. at 211, 93 S. Ct. at 368.

Similarly, here, injury is alleged with particularity. Metro-Act members living in Penfield are harmed by the exclusion of minority persons from Penfield in that they suffer the loss of important benefits from interracial associations. The Second Circuit, however, denied standing and distinguished *Trafficante* on the ground that the decision there "focused on the peculiarities of one piece of legislation." *Warth v. Seldin*, supra at 1194 (A. 964)

The fact that *Trafficante* focused[25] on the Civil Rights Act of 1968 is not determinative of whether plaintiffs there — or, Metro-Act members here — alleged such injury in fact as to assure that the dispute will be presented in an adversary context.

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[25]See, *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 n.8, 93 S.Ct. 364, 367 n.8 (1972)

Indeed, a congressional enactment alone cannot confer standing upon persons who have not alleged any actual or threatened harm. See *Schlesinger v. Reservists Committee to Stop the War*, — –U.S.——,—— n.14, 94 S.Ct. 2925, 2933 n.14 (1974); *O'Shea v. Littleton*, 414 U.S. 488, 493 n.2, 94 S. Ct. 669, 675 n.2 (1974); *Sierra Club v. Morton*, 405 U.S. 727, 732 n.3, 92 S. Ct. 1361, 1365 n.3 (1972). This Court noted in *O'Shea v. Littleton*, supra at 493 n.2, 94 S. Ct. at 669 n.2, that

> "[Congressional enactments] do not purport to bestow the right to sue in the absence of any indication that invasion of the statutory right has occurred or is likely to occur. . . . Perforce, the constitutional requirement of an actual case or controversy remains [Plaintiff] still must show actual or threatened injury of some kind to establish standing in the constitutional sense."

Accordingly, the relevance of *Trafficante* to the instant action lies not in its focus on the Civil Rights Act of 1968, but rather in its determination that the Article III requirement of injury in fact is satisfied by allegations that parties are being denied important benefits from interracial associations.[26]

Metro-Act members have been denied the social benefits from living in an integrated community. It is alleged that Penfield's discriminatory zoning ordinance and defendants' implementation of that law have the effect of excluding minority persons from residing in the Town of Penfield. (A. 15) Indeed, in 1970, only 60 of Penfield's 23,782 residents were black. (A. 470) As a result, Metro-Act members who reside in Penfield daily suffer the loss of benefits from interracial associations. In these circumstances, the organization may represent its injured

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[26]The Court's focus on the Civil Rights Act of 1968 is relevant only to the question whether the Court should exercise judicial self-restraint. Besides the Article III jurisdictional question, "problems of standing . . . involve a 'rule of self-restraint.'" *Association of Data Processing Services Organizations v. Camp*, 397 U.S. 150, 154, 90 S.Ct. 827, 830 (1970). A Congressional enactment which confers standing obviates the Court's need to consider whether judicial self-restraint is required. Id.

members in this proceeding for judicial review. "[I]n terms of Article III limitations on federal court jurisdiction ... the dispute sought to be adjudicated [here] will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Flast v. Cohen*, 392 U.S. 83, 101, 88 S. Ct. 1942, 1953 (1968).

Moreover, Metro-Act contends that policy considerations which underlie the standing doctrine[27] require judicial review of defendants' zoning ordinance and practices. Whether the policy considerations are examined in terms of "zone of interest"[28] or "nexus",[29] it is clear that the test is satisfied here. Certainly, the interest which Metro-Act seeks to protect — the right of its members to receive the benefits of interracial associations — is within the zone of interests sought to be protected by the First Amendment. "While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedom of speech, assembly, and petition. (citations omitted)" *Healy v. James*, 408 U.S. 169, 181, 92 S. Ct. 2338, 2346 (1972).

Additionally, there is a direct nexus between the harm to Metro-Act members and defendants' discriminatory and exclusionary practices and policies.[30] As this Court recently stated

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[27] See *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 154, 90 S.Ct. 827, 830 (1970); *Flast v. Cohen*, 392 U.S. 83, 99, 88 S.Ct. 1942, 1952 (1968); *Barrows v. Jackson*, 346 U.S. 249, 999, 73 S.Ct. 1031, 1034 (1952). But see *Association of Data Processing Service Organizations, Inc. v. Camp*, supra at 167, 90 S.Ct. at 830 (Mr. Justice Brennan and Mr. Justice White, concurring and dissenting)

[28] *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 90 S.Ct. 827 (1970).

[29] *Flast v. Cohen*, 392 U.S. 83, 88 S.Ct. 1942 (1968).

[30] *Linda S. v. Richard D.*, 410 U.S. 614, 93 S.Ct. 1146 (1973) is readily distinguishable from the instant action. There, as here, plaintiff suffered injury in fact. However, there, unlike here, plaintiff failed to establish that her injury resulted from enforcement of the challenged statute. Id. at 618, 93 S.Ct. at 1146.

in an analogous context, "It should be obvious that the exclusion of any person or group — all-Negro, all-oriental, or all-white — from public facilities infringes upon the freedom of the individual to associate as he chooses. . . . Because its exercise is so largely dependent on the right to own or use property ... any denial of access to public facilities must withstand close scrutiny and be carefully circumscribed." *Gilmore v. City of Montgomery*, ——U.S.——, ——, 94 S.Ct. 2416, 2427 (1974).

Finally, Metro-Act contends that, since its members have been injured in fact, the organization may proceed as a private attorney-general and "litigate the issues of the public interest in this case." *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 154, 90 S. Ct. 827, 830 (1970). Accord, *Sierra Club v. Morton*, 405 U.S. 727, 737, 92 S. Ct. 1361, 1367 (1972). *Scripps-Howard Radio v. Federal Communications Commission*, 316 U.S. 4, 62 S. Ct. 875 (1942). Manifestly, the public has an interest in the eradication of racially discriminatory and exclusionary zoning practices and policies. The District Court's conclusion in *Crow v. Brown*, 332 F.Supp. 382, 390 (N.D. Ga. 1971), aff'd 457 F.2d 788 (5th Cir. 1972), is certainly applicable here:

> "by legislative act and judicial decision, this nation is committed to a policy of balanced and dispersed public housing. ... Among other things, this reflects the recognition that in the area of public housing local authorities can no more confine low income blacks to a compacted and concentrated area than they can confine their children to segregated schools." (citations omitted) (footnotes omitted).

2. *Housing Council has standing to represent those members who are injured by defendants' zoning practices and policies.*

Housing Council is a nonprofit corporation organized for the purpose of receiving and administering funds of real and personal property, "and using and applying the whole or any part

of the income and principal thereof for the charitable purpose of combating community deterioration [and] eliminating racial and economic prejudice and discrimination in housing. . . ." (A. 172) The organization is specifically designed to undertake activities to increase "the supply of decent, safe and sanitary housing in a quality living environment throughout the county and Metropolitan Rochester area for all persons, especially those with low and moderate income." (A. 172)

The Housing Council's seventy-one members include at least seventeen groups which have been, or will be, involved directly in the development of low and moderate income housing. (A. 174) Indeed, at least one such group, Penfield Better Homes Corporation, submitted a proposal for a multi-racial low and moderate income housing project in the Town of Penfield but was unable to obtain defendants' approval of this project. (A. 629-31).

The Housing Council's membership also includes governmental agencies which have a direct interest in the provision of low and moderate income housing in the Rochester metropolitan area. (A. 174-75) Additionally, the large majority of the charter member groups have memberships which are comprised primarily of low and moderate income minority persons who are excluded from residing in Penfield. (A. 175)

Plaintiff-Housing Council contends that its members have been injured in fact by the Town's discriminatory and exclusionary zoning ordinance and defendants' implementation of that law. Those members who are engaged in the development of low and moderate income housing, but who are frustrated by defendants' practices and policies, are suffering economic injury. Manifestly, the loss of profits is sufficient injury to satisfy the case or controversy requirement and assure concrete adverseness. See *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 151, 90 S. Ct. 827, 829 (1970)[31] Similarly, the low income minority persons who

[31]See also 47-50, infra.

are excluded from living in Penfield because of their race and income level are suffering injury in fact. The daily hardships which these persons are forced to endure as a result of their confinement to the decaying inner city is concrete harm flowing directly from defendants' practices and policies.[32]

Notwithstanding the injury to Housing Council's members the Second Circuit held that the organization does not have standing to represent its members in this proceeding. *Warth v. Seldin*, supra at 1194 (A.966)[33] In so doing, the Second Circuit ignored the mandate of this Court in *Sierra Club v. Morton*, supra at 739, 92 S.Ct. at 1368:

> "It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review. NAACP v. Button, 371 U.S. 415, 428, 83 S.Ct. 328, 335. 9 L.Ed. 2d 405."

Accordingly, the proper inquiry is whether Housing Council's members satisfy the constitutional and nonconstitutional standing requirements. Here, there can be little doubt but that

[32]See discussion, supra at 27.

[33]The Second Circuit doubted that an organization has "standing" to represent its members in cases brought under the Civil Rights Act. *Warth v. Seldin*, 495 F.2d 1187, 1194 (1974). But see *Park View Heights Corporation v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972) and cases cited therein. The court apparently was uncertain whether an organization is a "person" or "citizen" within the meaning of the civil rights statutes, 42 U.S.C. §§1981-1983.

Plaintiffs submit that the court confused two separate issues. Whether an organization is a person or citizen within the context of those statutory provisions is a question which relates solely to whether plaintiffs have stated a proper claim for relief. That issue has no relationship whatsoever to the standing issues here: (1) Have the organizations or their members been injured in fact? (2) Is the interest they seek to protect arguably within the zone of interests protected by the statute? *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 90 S.Ct. 827 (1970). The standing issue, as discussed in *Data Processing*, is separate and distinct from the question whether the injured party has stated a proper claim for relief under a specific statutory or constitutional provision. See *Flast v. Cohen*, 392 U.S. 83, 99, 88 S.Ct. 1942, 1952 (1968).

the Council's members are suffering such injury as to "assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends. . . ." *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703 (1962). Moreover, the "interest sought to be protected is arguably within the zone of interests to be protected" by the statutory and constitutional guarantees here in question. *Association of Data Processing Service Organizations, Inc. v. Camp*, supra at 153, 90 S.Ct. at 830. The right to equal housing opportunity is protected by the Constitution of the United States and by the Civil Rights Acts, 42 U.S.C. §§1981-1983. See, e.g., *Tillman v. Wheaton-Haven Recreation Association*, 410 U.S. 437, 93 S.Ct. 1090 (1973); *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 90 S.Ct. 400 (1969); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S.Ct. 2186 (1968); *Buchanan v. Warley*, 245 U.S. 60, 38 S.Ct. 16 (1917). As this Court stated in its discussion of the constitutionality of the Civil Rights Act of 1866, 42 U.S.C. §1982,

> "Negro citizens, North and South who saw in the Thirteenth Amendment a promise of freedom - freedom to go and come at pleasure and to buy and sell when they please - would be left with a mere paper guarantee if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep."

Jones v. Alfred H. Mayer Co., supra at 443, 88 S.Ct. at 2205.

In these circumstances, the Housing Council has standing to represent its injured members in this proceeding for judicial review of defendants' zoning practices and policies.

3. ***Rochester Home Builders Association has standing to represent its members who are suffering economic injury as a result of defendants' racially discriminatory and exclusionary zoning practices and policies.***

The Rochester Home Builders Association is a nonprofit trade association representative of persons and firms engaged in construction and development of residential housing in the Rochester metropolitan area, including the Town of Penfield. (A.145-46) During the past fifteen years, members of the Association have constructed over eighty percent of the housing units in the County of Monroe and the Town of Penfield. (A.147)

The Home Builders request for permission to intervene in the action was denied by the District Court and the Second Circuit affirmed solely on the ground that the Association lacks standing. The court stated that "Rochester Home Builders has not tied its claim of standing to specific acts of appellees which have affected its members." *Warth v. Seldin*, supra at 1195. (A.966, 967)

Once again, the Second Circuit ignored the material allegations which must be accepted as admitted by defendants. See, e.g., *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 1849 (1969). Those allegations reveal that defendants

> "A. Administered the provisions of the said zoning ordinance by refusing to grant variances, building permits and by use of special permit procedures and other devices, so as to effect and propagate the exclusionary and discriminatory plan, policy, and/or scheme, heretofore referred to; and
>
> "B. Have failed to amend, modify or alter or waive the provisions of said ordinance, including amending, waiving, altering and/or modifying the provisions of the zoning map, the requirements pertaining to setback, minimum lot size, population density, use density, floor area, utilities, traffic flow, and other requirements, so as

to effect and propagate the exclusionary and discriminatory policy, plan or scheme hereinabove and hereafter referred to; and

"C. Refused to grant necessary tax abatement or otherwise failed as duly constituted legislative and administrative bodies, and through their agents and employees to cooperate with and assist and accommodate applications by Plaintiff's members and others for construction of low and moderate income single family and multiple unit housing in the Town of Penfield." (A.154-55)

Additionally, it is specifically alleged that defendants' practices and policies have "(a) prevented plaintiff's members from development, sale, and/or rental of housing to all those members of the metropolitan Rochester area who might require housing and (b) deprived plaintiff of substantial business opportunities and profits." (A.156) Indeed, the Association claims that its members have suffered damages in the sum of Seven Hundred and Fifty Thousand Dollars ($750,000) as a result of Penfield's zoning ordinance and defendants' implementation of that law. (A.159)

The Home Builders Association has alleged that its members are suffering concrete, economic injury flowing directly from defendants' zoning practices and policies. It is clear that such economic harm confers a personal stake in the outcome and assures that the issues will be presented in an adversary context, as required by Article III of the Constitution of the United States. See, e.g., *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832 (1970); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 90 S.Ct. 827 (1970); *Hardin v. Kentucky Utilities Company*, 390 U.S. 1, 88 S.Ct. 651 (1968). Since the Association has established that its members are injured, it may properly represent these members in this action for review of Penfield's zoning ordinance and defendants' practices. See *Sierra Club v. Morton*, 405 U.S. 727, 739, 92 S.Ct. 1361, 1368 (1972); *American Motor Freight Traffic Association v.*

United States, 372 U.S. 246, 247, 83 S.Ct. 688, 689 (1963) (trade association has standing to represent its injured members in a proceeding for judicial review).[34]

Equally clear is the fact that the Association may act as a private attorney general and assert the public interest in support of its claim. The theory that a private litigant may argue the public interest "is not uncommon in modern legislative programs. . . ." *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205, 211, 93 S.Ct. 364, 367 (1972) (citations omitted). The concept originated in *Scripps-Howard Radio v. Federal Communications Commission*, 316 U.S. 4, 62 S.Ct. 875 (1942). There, a competitor radio station challenged an FCC order which allowed a nearby station to change its frequency and increase its power. Id. at 5, 62 S.Ct. at 877. In reviewing the claim, the Court permitted the competitor to assert that the order did not serve the public interest. This Court recently explained that *Scripps-Howard* established a dual proposition: (1) the fact of economic injury gives a party standing to involve judicial review; and (2) once review is properly invoked, that party may argue the public interest in support of its claim. *Sierra Club v. Morton*, supra at 737, 92 S.Ct. at 1362.

Accordingly, the Home Builders Association contends that by virtue of the economic injury to the Association's members, it has standing to request review of Penfield's zoning ordinance and defendants' zoning practices. As the Eighth Circuit observed in *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208, 1212 (1972):

"It is as important to protect the right of sponsors and developers to be free from unconstitutional interferences in planning developing, and building an integrated

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[34]The necessity of permitting the Association to represent its members is especially apparent in view of the threats which Penfield officials have made against individual members. (A. 158-59)

housing project, as it is to protect the rights of potential tenants of such projects."

Furthermore, since judicial review is properly invoked, the Association may assert the public interest and seek to vindicate the national commitment to equal housing opportunity. To hold otherwise would frustrate the congressionally mandated, and judicially enforceable, guarantee that members of minority groups have the "freedom to buy whatever a white man can buy [and] the right to live wherever a white man can live." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 443, 88 S.Ct. 2180, 2205 (1968).

CONCLUSION

Petitioners, here, are seeking to invoke the federal court's power to review racially discriminatory and exclusionary zoning practices and policies. They urge that the standing doctrine in this civil rights action should be construed at least as broadly as it has been interpreted in other areas of the law. To hold otherwise would impede the courts in performance of "the most important single task to which American law must address itself, . . . the task of eradicating racism. . . . [I]f justice is the business of law, then, easily and by far, the first item on our law's agenda is and always ought to have been the use of every resource and technique of the law to deal with racism."*

Accordingly, the Court should hold that petitioners herein have standing to challenge Penfield's zoning ordinance and defendants' implementation of that law. The judgment of the

*Black, The Supreme Court 1966 Term, Forward: "State Action," Equal Protection, and California's Proposition 14, 81 Harv. L. Rev. 69-70 (1967)

Second Circuit should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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In The

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2024

ROBERT WARTH, *et al.*,

Petitioners,

vs.

IRA SELDIN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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In The

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2024

ROBERT WARTH, *et al.*,

Petitioners,

vs.

IRA SELDIN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS

Question Presented

The only question before this Court is whether the various individual and corporate petitioners have standing to challenge, on Constitutional and statutory theories, the zoning ordinance of the Town of Penfield, New York, and fifteen years' administration of that ordinance.

Statement of the Case

This case presents a challenge, on constitutional and federal statutory grounds, to the zoning ordinance, and its ad-

ministration, of the Town of Penfield, New York, which is a town located in Monroe County outside the City of Rochester, New York. (A. 13-14).[1] The defendants in the district court, respondents here, are the Town of Penfield and the individuals who comprise its zoning board, its planning board, and its town board. (A. 10-13).

The plaintiffs in the district court, all of whom are petitioners in this Court, were (1) low-income minority individuals (petitioners Ortiz, Broadnax, Reyes, and Sinkler) who reside outside the Town of Penfield and who contend that they have been excluded from Penfield by its zoning ordinance and its administration of the zoning ordinance; (2) real property owners and taxpayers of the City of Rochester (petitioners Vinkey, Reichert, Warth, Harris, and Ortiz) who contend that the real property taxes they must pay to the City of Rochester are increased because of Penfield's zoning ordinance and its administration of the zoning ordinance; and (3) petitioner Metro-Act of Rochester, Inc. ("Metro-Act"), a social-action corporation active in the Rochester metropolitan area.

The original plaintiffs moved (A. 165-69) for an order making petitioner Housing Council in the Monroe County Area, Inc. ("Housing Council") an additional party plaintiff. Housing Council is a corporation composed of governmental agencies and private organizations whose purpose is to study, coordinate and assist housing development in the Rochester metropolitan area.

Additionally, petitioner Rochester Home Builders Association, Inc. ("Home Builders") moved (A. 137-38) for an order allowing it to intervene. Home Builders is a trade association whose members are active in the home construction industry in the Rochester metropolitan area. (A. 145-46).

[1] Numbers preceded by "A" refer to pages in the Appendix.

Respondents, defendants below, moved (A. 120-23): under Fed. R. Civ. P. 12(b) (1), for an order dismissing the complaint on the ground that none of the plaintiffs had standing; under Fed. R. Civ. P. 12(b) (6), for an order dismissing the complaint on the ground that it failed to state a claim; in the alternative, under Fed. R. Civ. P. 12(e), for an order for a more definite statement; and, under Fed. R. Civ. P. 23(c) (1), for an order that the case may not proceed as a class action. Additionally, respondents opposed plaintiffs' motion to add Housing Council as a party plaintiff and Home Builders' motion to intervene.

The District Court for the Western District of New York, in an unpublished opinion (A. 948-51), held (1) that the original plaintiffs lacked standing, (2) that the complaint failed to state a claim, (3) that the action should not proceed as a class action, (4) that Housing Council lacked standing, (5) that Home Builders lacked standing, and (6) that, in the exercise of discretion, Home Builders should not be permitted to intervene. Accordingly, it denied plaintiffs' motion to add Housing Council, denied Home Builders' motion to intervene, and granted respondents' motion to dismiss.

On appeal by all the original plaintiffs, Housing Council, and Home Builders, the Court of Appeals for the Second Circuit affirmed, reaching only the ground that all appellants lack standing. *Warth v. Seldin*, 495 F.2d 1187 (2d Cir. 1974).

On October 15, 1974, this Court granted certiorari to review the questions of standing. ——U.S.——, 95 S. Ct. 40.

The above outline of who the petitioners are should be supplemented with an indication of who they are not. None resides in Penfield. None owns any real estate in Penfield. None owns any interest in real estate in Penfield. None proposes to acquire any real estate in Penfield. None pays any real estate taxes to Penfield. None is a builder. None is a developer. None proposes to construct any housing in Penfield. None has ever applied to any of respondents for a variance from Penfield's

zoning ordinance. None has ever applied to any of respondents for a building permit in Penfield. None has ever sought an amendment to the zoning ordinance.

It is respondents' position in this Court that none of the petitioners has standing to sue.

Summary of Argument

A. Low-income minority petitioners lack standing under the various tests announced by this Court. Of these the practical, litigation-oriented test of *Baker v. Carr*, 369 U.S. 186 (1962), which looks from the vantage point of the complaint to the efficacy of the trial and its outcome, seems the most useful here. These petitioners do not have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." 369 U.S. at 204. Especially where as here the legal ground of the case is constitutional, it is essential that a plaintiff be prepared to get down to cases, to bring facts to the law, and that the Court scrutinize the complaint to assure that he is prepared to do so.

The petitioners here, in their complaint and lengthy motion papers, have alleged little more than information about their incomes, their dissatisfaction with their present residences and statistical information about housing in Penfield which they say they have seen. Allegations about anything any respondent did that actually affected any of them are wholly absent, and allegations about their own efforts to locate housing in Penfield are perfunctory and conclusory: in essence, they say no more than that "I looked around and found nothing."

These petitioners' allegations do not establish direct injury as a result of the enforcement of Penfield's zoning ordinance, *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923); or injury in fact, *Association of Data Processing Service Organizations,*

Inc. v. Camp, 397 U.S. 150, 152 (1970); or that there is any nexus between their residential situations and zoning in Penfield, *Flast v. Cohen*, 392 U.S. 83 (1968); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973).

Neither governmental action complained of nor injury is alleged with particularity. What is alleged amounts to no more than an inference of injury by virtue of an asserted tendency of the ordinance. This is not enough. *O'Shea v. Littleton*, 414 U.S. 488 (1974); *Linda R.S. v. Richard D., supra.*

In the area of "open housing" litigation, the standards of concreteness and specificity are no less prerequisites of standing. Without exception recognized plaintiffs have been persons with an interest in a particular property or particular project, a legal interest or a real and definite factual expectation. See citations and discussions at pages 18-25 below.

Particularly in a case such as this one in which constitutional review of a complicated and highly local legislative mechanism is sought, plaintiffs must, especially in light of the practical considerations of *Baker v. Carr, supra*, be able to give the lawsuit focus and body and to show the Court the challenged legislative mechanism in operation, manifest in their own cases. These petitioners are not such plaintiffs.

B. Taxpayer petitioners lack standing under *Doremus v. Board of Education*, 342 U.S. 429 (1952), under which standing requires direct financial injury to the taxpayer as a result of a measurable appropriation or disbursement by the government to which he is a taxpayer. The *Doremus* requirements of directness and measurability were borrowed from *Massachusetts v. Mellon*, 262 U.S. 447 (1923), which was made subject to a single exception by *Flast v. Cohen*, 392 U.S. 83 (1968). *Flast*, however, expressly re-affirmed *Doremus* as the test for non-federal taxpayer standing.

The taxpayer petitioners here do not attack a taxing or spending measure and make no challenge at all to any action or program of the government to which they are taxpayers, the City of Rochester. Because of these deficiencies, they cannot allege any measurable pocketbook injury with any kind of direct causal connection to the zoning ordinance attacked.

C. Organizational petitioners lack standing because none has anything more than an interest in a problem. *Sierra Club v. Morton*, 405 U.S. 727 (1972). The only organizational petitioner that seeks standing in its own right is petitioner Metro-Act of Rochester, Inc. ("Metro-Act"), which claims standing as a taxpayer of the City of Rochester. As in the case of the individual taxpayer petitioners, such status is insufficient.

Each organizational petitioner seeks derivative standing to substitute for its members, although there are no "special circumstances" justifying such substitution, as there were in, for example, *National Motor Freight Traffic Ass'n., Inc. v. United States*, 372 U.S. 246 (1963); *NAACP v. Button*, 371 U.S. 415 (1963); or *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

Petitioner Metro-Act seeks derivative standing because of its members who are City of Rochester taxpayers, but this fails for the same reason the individual taxpayer petitioners fail. Metro-Act also seeks derivative standing because of its low-income minority members who might want to move to Penfield, but this fails for the same reason the individual low-income minority petitioners fail. Metro-Act also seeks derivative standing because of its members who reside in Penfield. But that claim was not made in the complaint. More importantly, Metro-Act has not demonstrated how any of its Penfield members has been injured by any administrative action or policy of any of respondents; there is no allegation, for example, that any Metro-Act Penfield member has ever applied for a zoning variance, zoning amendment, building permit, or special permit.

Petitioner Housing Council in the Monroe County Area, Inc. ("Housing Council") seeks only derivative standing. One of its members, Metro-Act, lacks standing in its own right and cannot give Housing Council derivative standing. Its members who are governmental agencies can give it no standing because there is no showing that any has anything other than an interest in a problem. Its members who are organizations that are themselves comprised of low-income minority members cannot give double derivative standing for the same reason the individual low-income minority petitioners lack standing. Penfield Better Homes Corporation cannot give Housing Council derivative standing because it cannot pursue its own claims in its own right.

Petitioner Rochester Home Builders Association, Inc. ("Home Builders"), seeks only derivative standing. But it makes no showing that any of its members are prepared, or even willing, to construct low-income housing in Penfield or that any of them has ever tried in the past.

Argument

Each of the various individual and corporate petitioners lacks standing to challenge, on various constitutional and statutory theories, the zoning ordinance of the Town of Penfield, New York, and fifteen years' administration of that ordinance.

We are well aware that standing is the type of inquiry that must largely be made on a case by case basis. *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 151 (1970). General principles from and specific textual passages of specific cases may illustrate the standing issues in a particular case, but the standing question in that particular case must focus on its particular plaintiffs. *Flast v. Cohen*, 392 U.S. 83, 99 (1968). No plaintiff has ever been granted standing to sue who lacked as many of the indicia of plaintiffhood as do these petitioners.

A. *Low-Income Minority Individuals*

Petitioners Ortiz, Broadnax, Reyes and Sinkler lack standing under the tests announced by this Court.

Of these tests the one in *Baker v. Carr*, 369 U.S. 186 (1962), seems to us the most useful for the purposes of this case. Both that case and this one involved state or local legislation measured against the Fourteenth Amendment. Unlike *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669 (1973), and *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972), for example, the standing issue in *Baker v. Carr* did not arise out of a federal agency context in which specific congressional legislation could be invoked as a guide; nor does it here. The standing issue in *Baker v. Carr* was not influenced, as it seems to have been in *Flast v. Cohen*, 392 U.S. 83 (1968), by the presence in the case of issues on the merits arising from the Establishment Clause of the First Amendment. The same is true in this case.

In ruling on the standing question in *Baker v. Carr*, the Court looked ahead from the vantage point of the complaint to the trial, and beyond the trial to the outcome of the litigation. The gist of the question of standing, the Court said, is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." 369 U.S. at 204.

The idea is not simply to itemize the plaintiff's characteristics, isolated from the practical considerations of litigation. Standing, under *Baker v. Carr* at least, does not emerge from a recitation of details that describe and identify the plaintiff. It is not enough to allege, as the plaintiffs have done in the case now before the Court, that in effect, "We are real people with real problems." That much is true of all people. See *Schlesinger v. Reservists Committee to Stop the War*, ——U.S.——, 94 S. Ct. 2925 (1974).

Baker v. Carr formulates a practical test of standing. Its test does not ask theoretical questions. It asks what this plaintiff, personally, has to gain from this lawsuit. It asks whether, at a trial, this plaintiff will bring facts to the law. It asks not only whether there are differences between the parties but whether there is a "concrete adverseness" which promises at a trial to cause unparticularized constitutional concepts to coalesce into a factual precipitate.

What is a bare jurisdictional minimum in terms of these considerations, that is, what crystalizes the plaintiff's differences with the defendants into a case or controversy within the meaning of Article III, and what in terms of these considerations is a matter rather of judicial wisdom about the probable efficacy of a trial, is disputable. But, perhaps because of the greater danger of abstractness and the more far-reaching effects of the decision when the legal ground of the lawsuit is constitutional rather than statutory, the Court in *Baker v. Carr* referred the importance of a personal stake in the outcome, of concrete adverseness and of a sharp presentation of the issues to the courts' need for "illumination of difficult constitutional questions."[2] When the law to be applied is the Constitution, more than ever it is essential that a plaintiff get down to cases and that the Court scrutinize the complaint to assure that he is really prepared to do so.

These petitioners are not.

Of petitioner Andelino Ortiz the complaint tells us only that he is a resident of Wayland, New York and the owner of real

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[2]The recognition of the necessity in constitutional litigation of a personal stake in the outcome of the lawsuit was not new with *Baker v. Carr*. This Court has long held that it is insufficient for a would-be plaintiff to show "merely that he suffers in some indefinite way in common with people generally," *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923), or that he merely seeks "to require that the Government be administered according to law and that the public moneys be not wasted," *Fairchild v. Hughes*, 258 U.S. 126, 129 (1922). Rather, he must allege "a direct injury," *Ex parte Levitt*, 302 U.S. 633, 634 (1937), "an injury peculiar to himself," *Tyler v. Judges*, 179 U.S. 405, 406 (1900).

property in the City of Rochester, New York; that he is of Spanish/Puerto Rican extraction; that he was at one time employed in the Town of Penfield; and that he "has been excluded from living near his employment as he would desire by virtue of" the zoning ordinance and administration of the Town of Penfield. (A. 6-7).

Mr. Ortiz's 39-page affidavit (A. 362-401), submitted in opposition to respondents' motion to dismiss in the district court, does not reveal what he stands to gain from this litigation or what concrete differences he has with any of the respondents. It gives some additional facts about his background — his age, his family, his earnings at the time the lawsuit was commenced. (A. 364-67). It says that he was no longer working in the Town of Penfield at the time of the original motion (A. 366) and was unemployed as of that time. (A. 367-68). It expresses dissatisfaction with his residences since 1966. (A. 365, 368-69, 372-73). It says that he owns a house near Wayland, New York, which he purchased in 1968 for $9,500.00 (A. 372) and that the house he owns in Rochester has been converted into rental property. (A. 373-74). It discusses his residential expenses (A. 374-75) and his commuting expenses when he was working in Penfield (A. 376-77).

The balance of the affidavit incorporates some statistical information on housing costs compiled by petitioner Metro-Act (A. 370-72) and recites at considerable length the reasons why Mr. Ortiz regards the Town of Penfield as a more desirable place to live than the Springwater/Wayland area where he presently resides (A. 377-400). These include better schools (A. 377-80, 383-91), better municipal services (A. 381, 395-98), better recreational facilities and services (A. 381-83, 391-95), better shopping opportunities (A. 398-99), and better summer employment possibilities for his children (A. 399-400). This comparative information, Mr. Ortiz says, has been called to his attention by petitioner Metro-Act. (A. 377, 383).

Mr. Ortiz speaks repeatedly of his being excluded from Penfield, but this assertion rests entirely on two things: (1) statistical information about the cost of housing in Penfield, which was compiled by Metro-Act and which Mr. Ortiz says he has seen (A. 371-72) and (2) a recitation of Mr. Ortiz's efforts to find housing in Penfield.

The whole of this recitation of efforts is as follows:

> Since my job at that time and continuing until May of 1972 was in the Town of Penfield, *I initiated inquiries* about renting and/or buying a home in the Town of Penfield. However, because of my income being low or moderate, I found that there were no apartment units large enough to house my family of wife and seven children, nor were there apartment units that were available reasonably priced so that I could even afford to rent the largest apartment unit. I have been *reading ads* in the Rochester metropolitan newspapers since coming to Rochester in 1966 and during that time and to the present time, I have not located either rental housing or housing to buy in Penfield. (A. 370) (emphasis added)

These are rather casual efforts, initiating inquiries and reading ads. The initiative exerted by the other individual petitioners is similarly scant.

Petitioner Clara Broadnax, in her affidavit of 17 pages (A. 404-21), says that she "bought newspapers and read ads and walked to look for apartments until I found the place where I now reside. I found that there was virtually no choice of housing in the Rochester area." (A. 407). In connection with the efforts she made she does not mention Penfield.

Petitioner Angela Reyes, in her affidavit of 13 pages (A. 422-34), says that moving into her present house in the City of Rochester

> was the culmination of my husband and my shopping around the entire Rochester area to locate a house which we could afford to buy. We began this search by con-

> tacting a real estate broker and finally securing the help and interest of one real estate broker. . . . [O]ur investigation for housing included the Rochester bedroom communities of Webster, Irondequoit, Penfield and Perinton. Our search over a period of two years led us to no possible purchase in any of these towns. (A. 427-28).

She says that there was in Penfield "no possibility of finding a house costing less than $35,000.00." (A. 429). She says that she has two small sons (A. 424) and has a disposable income for housing purposes of approximately $231.00 per month (A. 428).

Yet her allegations about the housing situation in Penfield are unexplained, undocumented and conclusory. She does not say what efforts she or anyone on her behalf ever actually made to find housing in Penfield. She does not say what properties, if any, she actually looked at. She does not say what she has looked for — a house to own or rent, a duplex, an apartment, a mobile home, or whether the scope of her "shopping around" was limited by personal preferences or by necessities. She does not say how she has determined the minimum costs of housing to which she swears or to what kinds of "house" the $35,000 figure applies. We do not know either what unexpressed refinements of meaning are contained in the phrases "no possible purchase" and "no possibility of finding."

Petitioner Rosa Sinkler, in her affidavit of 21 pages (A. 435-55), says that "there is just no housing to rent in the City of Rochester for a person of my low income." (A. 451). She says,

> In the past I have searched for alternate housing in the Rochester metropolitan area and I am continually alert to other possibilities for housing. . . . Realistically, after careful search for adequate housing in the Rochester metropolitan area over a six year period, I have found that a black person has no choice of housing in the Rochester metropolitan area. (A. 452).

She says, "For example, there are no apartments available in the Town of Penfield which a person of my income level can afford." (A. 452-53). "I have sought housing accommodations in the Rochester metropolitan area, including the Town of Penfield — all to no avail because I am a black person of low income." (A. 453)

None of the four makes any allegation about anything that any of the respondents actually did, any action they took or refused to take.

From none of the angles from which standing may be examined does it appear that any of these four persons has it. There is no nexus here between the petitioners' own situations and the governmental action of which they complain. *Flast v. Cohen*, 392 U.S. 83 (1968). There are no allegations which suggest any direct injury as a result of the enforcement of Penfield's ordinance. *Massachussetts v. Mellon*, 262 U.S. 447, 488 (1923). "[A]t least in the absence of a statute expressly conferring standing, federal plaintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973) (footnote omitted). A "party seeking review must *himself* have suffered an injury." *Sierra Club v. Morton*, 405 U.S. 727, 738 (1972) (emphasis added). And the injury must be injury in fact. *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152 (1970). Speculative or conjectural injury is not enough. *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974). There are in the some nine hundred pages of the record really no allegations, except of the most conclusory sort, of injury that happened to a petitioner because of something that a respondent did.

On the subject of the directness of injury and its causation, it is true that this Court has found standing when the injury was not highly "direct and perceptible," when the line of causation

was "attenuated." *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 688 (1973). But, aside from the difference here that papers warranting summary judgment on the standing issue were made available to the district court (*id.* at 689),[3] there was a definite starting point for the line of causation in *SCRAP*, a specific agency action. The petitioners did not challenge the whole of the Interstate Commerce Commission Act, as petitioners here have challenged the whole of the Penfield zoning ordinance, and 38 years' administration of it by the Commission, as petitioners here have challenged 15 years' administration by respondents and their predecessors. (A. 17). Agency action was alleged with particularity in *SCRAP*, and so was injury. In the present case, not only is the line of causation not traced but the end points, government action and injury, are completely out of focus. By the standards of *Baker v. Carr*, with its view to a sharp presentation of the issues, the present case is readily distinguished from *SCRAP*.

These petitioners have tried to spell out injury in two ways. The factual descriptions in their affidavits dwell almost completely on the first of these: that they individually do not have very much money. But that situation is not a direct injury resulting from the enforcement of the Penfield zoning ordinance. The allegation of low income and certain of its attendant circumstances is being put to double service in the complaint and motion papers. Insofar as it recites the occasion for injury it could be an appropriate starting point, but it is nowhere causally connected to the respondents; it will therefore not suffice under existing cases, and the concept which underlies them, as injury in fact.

The petitioners also allege that, as a function of their low income, they are excluded from residing in Penfield because of the zoning ordinance and its administration. The injury under this theory is not poverty but exclusion on the basis of it: Penfield's zoning is such, petitioners say, that persons of low income are excluded from the Town and consigned to bad living conditions — shabby homes, high crime rates, poor schools. In the vastness of the record, however, the petitioners never get beyond this formula statement.

Injury of this kind, exclusion and consignment to bad neighborhoods, is not, as set forth in petitioners' papers, injury in fact; it is injury by supposition. The record is devoid of events. For purposes of standing, "injury or threat of injury must be

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[3] Petitioners, relying on *Jenkins v. McKeithen*, 395 U.S. 411, 421, *rehearing denied*, 396 U.S. 869 (1969), argue that all their factual allegations, even if unsupported, must be accepted as true. Petitioners' position reaches too far. The record in this case, as printed in a two-volume Appendix, consists of 56 pages of complaint and proposed intervenor's complaint (A. 1-35, 144-63), 81 pages of Penfield's zoning ordinance (A. 36-116), a 10-page affidavit by respondents' counsel (A. 124-33), 15 pages of affidavits and an exhibit in support of petitioners' motions to add new parties (A. 139-43, 170-79), and 767 pages of affidavits and exhibits in opposition to respondents' motion to dismiss (A. 180-947), including an affidavit by each named plaintiff. This case is much different from cases such as *SCRAP*, where the Court has only the pleadings.

Such a record, with petitioners clearly having and taking every opportunity to put forth every fact in support of their position, is precisely the situation contemplated by Federal Rule of Civil Procedure 12(b)'s conversion of a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment. *Carter v. Stanton*, 405 U.S. 669, 671 (1972). Petitioners had every opportunity to place in the record every fact they deemed relevant, and the court was free to consider their affidavits. Fed. R. Civ. P. 43(e). Although the district court did not indicate whether it treated respondents' motion as a Rule 56 motion, the court of appeals clearly relied on petitioners' affidavits.

Actually, Rule 12(b)'s conversion feature is technically inapplicable here. Since standing is necessary to jurisdiction, respondents' motion to dismiss for lack of standing was probably granted under Rule 12(b)(1), not under Rule 12(b)(6) (although the district court also dismissed the complaint for failure to state a claim, which had to be under Rule 12(b)(6)). In any event, the court was free to consider the affidavits under Rule 43(e).

We certainly acknowledge that many of petitioners' factual showings were, for purposes of the motions, uncontested below and may be so considered by this Court. But that concession does not extend to all of petitioners' conclusory "facts" when they are unsupported by anything in the record. For example, petitioners' mere use of phrases like "racial discrimination" and "injury in fact" and "exclusion" does not elevate such conclusions into "facts" where the record gives them no support. And a claim by a petitioner that he "searched" for housing in Penfield is really of little assistance to this Court in the absence of supporting details.

both 'real and immediate,' not 'conjectural' or 'hypothetical.'" *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974). Here the allegation of injury by exclusion is wholly by general assertion and inference. *Id.* at 497.

The complaint of these petitioners alleges that Town officials have failed to grant variances, building permits and special permits (A. 17), but their affidavits reveal that none of them has ever applied for any of these things. The complaint says that the respondents have failed to amend the zoning ordinance in the ways petitioners would have it amended (A. 19), but their affidavits show that none of these petitioners has engaged with any official or body of the Town over such a proposal, or in any manner whatever attempted to exert an influence over either the administrative or the political process in the Town of Penfield.

Far from having availed themselves of any local governmental procedures, none of these four took action of their own, so far as their papers reveal, which was calculated to locate housing in Penfield. There does not appear in the record any profound commitment to finding a home there or the kind of effort which reflects such a commitment. The richest allegation in the record is of a desultory "shopping around" leading to the conclusion "no possibility." (A. 427-29)

In its essence the complaint here is generally similar to the one described in *O'Shea v. Littleton*, *supra*, 414 U.S. 488, alleging that the respondents have engaged in and continue to engage in a pattern of conduct which deprives the plaintiffs of their constitutional rights. *Id.* at 495. But if that is the tendency of Penfield's zoning, one cannot tell it from anything these petitioners have done; they allege the tendency, but they have never tested it.

The absence of injury here means the absence of a personal stake in the outcome of the litigation. Officials of the Town have denied nothing to any of the petitioners which a judgment of the district court can provide them. If the worst allegations of the

complaint were true, moreover, and the district court ordered a redrawn zoning ordinance, it is far from clear that any of these individual petitioners would be affected by that judgment. Would petitioner Reyes, for example, be interested in "shopping around" at some future time? That is a matter of speculation, as it is a matter of speculation what she has looked for in the way of housing in the past and what she would be looking for in the future. What resulted might not suit her residential preferences or her needs. Penfield itself might not be suitable.

Even where the plaintiff's injury is real and personal, far more so than it is here, the nexus between the status asserted and the claim presented is "essential to assure that he is a proper and appropriate party to invoke federal judicial power." *Linda R.S. v. Richard D.*, *supra*, 410 U.S. at 618, quoting *Flast v. Cohen*, *supra*, 392 U.S. at 102. Even if petitioners were granted the relief requested, the prospect that a redrawn ordinance would in the future result in housing satisfactory to them wherein they would choose to take residence or be in a position to take residence can, at best, be termed only speculative. Cf. *Linda R.S. v. Richard D.*, *supra*, 410 U.S. at 618.

Linda R.S. did not claim injury by mere virtue of statutory tendency. She sued on behalf of herself and her minor daughter to have a Texas child support statute declared unconstitutional and to enjoin law enforcement officials from refusing to enforce it against fathers of illegitimate children. She was the mother of an illegitimate child, whose father was not supporting it. She had made application to the local district attorney, and he had refused to take action. Her adverseness to both father and public officials could hardly have been more concrete, or her economic injury more factual; and her personal stake in the outcome was the receipt of financial support by virtue of the coercive effect of criminal prosecution. But the hiatus between prosecution and support defeated her standing; her stake in the outcome was insufficient because of the intervening contingency.

In denying standing, the Court in the case of Linda R.S. noted "the unique context of a challenge to a criminal statute." 410 U.S. at 617. But there is one distinction that it would not be proper to draw between that case and this one: namely that, if the requested relief were granted, achievement of the desired effect would be out of Linda's hands, while it would be within the power of these petitioners to obtain it. There are no guarantees in either case of plaintiffs' achieving the desired objective, child support in the one case or a residence in Penfield in the other. If the statute's protection had been extended to her case, however, Linda would have had the continuing coercive power of it at her disposal. The particularity of her need and the extent of her past effort promised that she would use it — much more so than the alleged "shopping around" and reading of ads promises that the present petitioners will ever benefit from the new zoning ordinance they have requested. Her injury was a good deal less suppositious, and her stake in the outcome was certainly no more so, than that of these petitioners.

In *Linda R.S. v. Richard D.*, moreover, a sharpened presentation of the issues was most likely. Constitutional review of the Texas statute would have taken place in the context of concrete adversary relationships, and the challenged law could have been scrutinized in operation, manifested in her dilemma. Here a far more complicated legislative scheme with far more complicated enforcement mechanisms is challenged, and none of these petitioners can show a federal court its workings.

All of the so-called "open housing" cases preceding this one, both in this Court and in the lower courts, involved degrees of concreteness and specificity totally lacking in the present suit.

For example, *Buchanan v. Warley*, 245 U.S. 60 (1917), the first of the "open-housing" cases decided by this Court, was a case between the immediate parties to a contract for the sale of a specific parcel of land. The case involved only the right of a property owner to sell to whomever he wishes. 245 U.S. at 73.

Similarly, *Barrows v. Jackson*, 346 U.S. 249, *rehearing denied*, 346 U.S. 841 (1953), was an action by property owners for damages because of a breach of a racially restrictive covenant; judgment for plaintiff would have caused "a direct, pocketbook injury" to the seller who had breached the covenant. 346 U.S. at 256. *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969), involved a lease of a house and attendant rights to recreation facilities. The white owner-lessor clearly had standing to enforce his own right to lease his own house to whomever he wished, even though part of his argument would also enforce the rights of minority lessees. 396 U.S. at 237.

In *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972), plaintiffs were tenants in a particular apartment complex alleging that their own owner-landlord injured plaintiffs by a racially discriminatory renting policy. The rights of non-tenants were not involved at all, except as evidence of the owner-landlord's discrimination.

The action against the owner-landlord brought under Section 810(d) of the Civil Rights Act of 1968, not pleaded in this case, charged it with discrimination against nonwhite applicants in numerous identified ways and sought injunctive relief. The action was brought only after complaints filed by the plaintiffs with the Secretary of Housing and Urban Development and the subsequent efforts of that federal agency and the appropriate state agency had failed to secure voluntary compliance with the Act. The plaintiffs therefore not only were tenants of the complex in which the alleged abuses were being practiced but had sharpened and ripened the dispute with their owner-landlord by exhausting the administrative remedies available to them. The Court concluded, moreover, that both congressional intention and federal agency construction established that tenants such as plaintiffs were aggrieved persons within the meaning of the Act and indeed that the primary method of enforcing the Act was complaints by such persons.

This same degree of concrete specificity has also been involved in all, or at least nearly all, of the lower court cases constituting the recent "open housing" field. Petitioners and their friends cite to several lower court opinions that they contend should lead this Court to grant standing here. Actually, all those cases demonstrate is that so-called "open housing" has been an active field of litigation in the federal courts throughout the country; undoubtedly the mere existence of some of petitioners and some of the *amici* is proof enough of wide social concern in the issue. But none of the cases relied on has extended the standing principles enunciated by this Court far enough to include these petitioners.

In *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972), one corporate plaintiff had purchased a specific 11.9-acre parcel of land and had advanced "seed money" for a specific project's planning. The other corporate plaintiff was acting as a sponsor of the project and held title to the land. The Department of Housing and Urban Development had issued a "feasibility letter," which was "tantamount to a contractual obligation to assist a project." 467 F.2d at 1211. Further, architectural plans had been completed and approved, mortgage financing had been secured, and legal and organizational financing had been completed. *Id.* Defendant City of Black Jack had been newly incorporated, after vocal citizen opposition to the project, and almost immediately adopted a zoning ordinance that would forbid construction of the project. The court held that both corporate plaintiffs had standing because of their direct economic investment and interest in this project. The corporate plaintiffs also had standing to assert the constitutional and statutory rights of individuals who desired to move into the project. At least partly because the individual plaintiffs' rights would be litigated, the court granted them standing to challenge the zoning ordinance. The court's main concern was whether their claims were "ripe;" because the developers were prepared to proceed with the project and were

stopped only by the defendants' actions, the court found the individuals' claims sufficiently "concrete" to be ripe for adjudication. 467 F.2d at 1215. But it was plaintiffs' focus on a specific project, not their abstract complaints as to their present poor housing, that opened the federal court's door to them:

> As near as one can determine from the pleadings in this case, the plaintiffs need only to resolve this zoning controversy to begin construction of the apartments. 467 F.2d at 1215.

That is exactly the reasoning of the court below when it properly distinguished the present petitioners:

> The focusing of the controversy on a particular project assures "concrete adverseness." The concrete possibility of obtaining new and better housing gives potential residents a personal stake in the outcome. The relief requested is not hypothetical. *Warth v. Seldin, supra*, 495 F.2d at 1192.

In *Crow v. Brown*, 457 F.2d 788 (5th Cir. 1972), *aff'g.* 332 F. Supp. 382 (N.D. Ga. 1971), plaintiffs and an intervenor owned specific parcels of land, zoned for apartments, on which they proposed to build low-income, federally sponsored public apartments. They had prepared "elaborate plans" for the construction, and "all building code and planning requirements" were satisfied. 332 F. Supp. at 384. They were joined by plaintiffs and intervenors on the waiting list of the local public housing authority for low-rent public housing who claimed they were being denied access to low-rent housing outside racially concentrated areas. Again, the court of appeals in the instant case properly distinguished *Crow v. Brown. Warth v. Seldin, supra*, 495 F.2d at 1191 n.6 at 1192.

In *Kennedy Park Homes Ass'n., Inc. v. City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971), one corporate plaintiff had a commitment to purchase a specific parcel of land from another corporate plaintiff. A third corporate plaintiff had been organized as a housing or mort-

gagor company. The Federal Housing Authority had initially approved federal financial assistance. A professional housing consultant and an engineer had been hired. All that the specific project lacked was one sewer form, which defendant mayor refused to sign. If plaintiffs could obtain that signature, "the consummation of the project could be effected." 436 F.2d at 112. They were joined by "individual home seekers," 436 F.2d at 109, who were not otherwise mentioned in the court's opinion. The court of appeals in the instant case quite properly distinguished *Kennedy Park*. *Warth v. Seldin, supra*, 495 F.2d at 1191 n.6.

In *Dailey v. City of Lawton*, 425 F.2d 1037 (10th Cir. 1970), *aff'g.* 296 F. Supp. 266 (W.D. Okl. 1969), the corporate plaintiff proposed to build a privately sponsored low-income housing project on a particular site. It owned the land in question, had applied for a zoning amendment, had done everything necessary to build, and had prepared preliminary plans and specifications. 296 F. Supp. at 268. The other plaintiff was a potential renter of space in that very project. As was true with *Park View*, the court of appeals below quite properly distinguished the concrete issues in *Dailey* from the abstract hopes involved here. *Warth v. Seldin, supra*, 495 F.2d at 1192.

In *United Farmworkers of Fla. Housing Project, Inc. v. City of Delray Beach*, 493 F.2d 799 (5th Cir. 1974), the corporate plaintiff had acquired an option to purchase a specific parcel of land, which was already zoned for multiple family dwellings. Zoning was not even at issue; the only issue was the municipality's refusal to allow the proposed project to tie into existing sewer and water lines. 493 F.2d at 805. The project had been given high funding priority by the Farmer's Home Administration. 493 F.2d at 804 n.7. Individual farmworkers were also plaintiffs, but they were mentioned by the court only in affirming the denial of class action status. 493 F.2d at 812.

In *Southern Alameda Spanish Speaking Org. v. City of Union City*, 424 F.2d 291 (9th Cir. 1970), the corporate plaintiff had acquired an option on a specific parcel of land and had had it rezoned for multi-family residential use; it had paid $6,000 for the option. 424 F.2d at 294 n.5. "The rights asserted are those of a landowner (SASSO) to be free from arbitrary restrictions on land use." 424 F.2d at 294. The other plaintiffs are not identified by the court. *SASSO* was properly distinguished by the court of appeals in the instant case. *Warth v. Seldin, supra*, 495 F.2d at 1191 n.6 at 1192.

In *Sisters of Providence v. City of Evanston*, 335 F. Supp. 396 (N.D. Ill. 1971), one corporate plaintiff owned a specific parcel of land and had contracted to sell it to another corporate plaintiff who proposed to build a housing development, the sale being contingent on the parcel's rezoning. Both had standing because of their interest in the property, and plaintiff buyer was also allowed to assert rights of those who would be denied housing if the parcel were not rezoned. 335 F. Supp. at 400-01. Individual plaintiffs also had standing as potential residents of the project in question, and class action status was granted. 335 F. Supp. at 401-02. Two neighborhood groups interested in low and moderate income housing were also granted standing, at least so they could attempt to demonstrate that there was a compelling need that they represent rights of persons not immediately before the court. 335 F. Supp. at 401. As to each plaintiff, however, the court indicated that standing was only conditional. 335 F. Supp. at 400. The court of appeals in the instant case properly distinguished *Sisters*. *Warth v. Seldin, supra*, 495 F.2d at 1191 n.6 at 1192.

In *Banks v. Perk*, 341 F. Supp. 1175 (N.D. Ohio 1972), *aff'd in part & rev'd in part*, 473 F.2d 910 (6th Cir. 1973), plaintiffs were and represented tenants in and applicants for public housing. They sought (1) to enjoin the revocation of building permits for two specific public housing projects and (2) to enjoin the previous site selection process for future housing.

As to the first item, they were joined by the corporation who would develop and administer the two projects. 341 F. Supp. at 1177.[4] This case was affirmed in part and reversed in part without opinion. 473 F.2d 910.

Similarly, plaintiff in *Morales v. Haines*, 486 F.2d 880 (7th Cir. 1973), had entered into a contract to purchase a specific house to be built by a specific builder. And in *Ranjel v. City of Lansing*, 417 F.2d 321 (6th Cir. 1969), *cert. denied*, 397 U.S. 980, *rehearing denied*, 397 U.S. 1059 (1970), a developer had prepared plans and specifications for a project on a particular site, which had already been rezoned.

Other types of "housing" cases offer no assistance to petitioners. Residents in and applicants for public housing have been held to have standing to challenge specific site selections, *e.g., Blackshear Residents Org. v. Housing Auth.*, 347 F. Supp. 1138 (W.D. Tex. 1972); *Banks v. Perk, supra; Gautreaux v. Chicago Housing Auth.*, 265 F. Supp. 582 (N.D. Ill. 1967), as do neighbors of a specific project, *e.g., Shannon v. United States Dept. of Housing & Urb. Dev.*, 436 F.2d 809 (3d Cir. 1970). Individuals have been held to have standing to sue for admission to a public housing waiting list. *E.g., King v. New Rochelle Municipal Housing Auth.*, 442 F.2d 646 (2d Cir.), *cert. denied*, 404 U.S. 863 (1971); *Cole v. Housing Auth.*, 435 F.2d 807 (1st Cir. 1970). A housing authority itself has standing. *E.g., Cuyahoga Metropolitan Housing Auth. v. City of Cleveland*, 342 F. Supp. 250 (N.D. Ohio 1972), *aff'd sub nom. Cuyahoga Metropolitan Housing Auth. v. Harmody*, 474 F.2d 1102 (6th Cir. 1973). And, of course, individual displacees or prospective displacees of an urban renewal project have standing. *E.g., Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d

[4] *Amicus* National Committee Against Discrimination in Housing is simply mistaken when it says that the builder of the proposed projects "is conspicuous by his absence." Quite the contrary; the developer was a defendant and cross-claimed against the other defendants on plaintiffs' Count I.

920 (2d Cir. 1968);[5] *Garrett v. City of Hamtramck*, 335 F. Supp. 16 (E.D. Mich. 1971), supplemental order, 357 F. Supp. 925 (1973).

The case which petitioners Ortiz, Broadnax, Reyes and Sinkler seek to litigate has none of the specificity, concreteness, and factuality which are the prerequisites of standing. This is so with respect to each of the components of every available standing test. In the cases which we discuss in this brief, it is true that one or another of these components is sometimes more blurred than is usual — injury in *Flast*, for example, and causation in *SCRAP*. In none of them, though, is there such a complete lack of focus as there is here; nothing stands out clear in the foreground in this case.

There is no identified provision or governmental action challenged. There is no occasion alleged on which the petitioners engaged with any officials in the Town. There is no housing project or apartment complex or piece of ground in the complaint. There is no interest in property or application for residence. There is no investment of money or effort by the petitioners. There is no remedy sought which, if granted, will affect them personally.

What the complaint offers is a zoning ordinance which the petitioners allege is exclusionary on its face and the allegation that they, as low income persons who reside in the general metropolitan area of which Penfield is a part, are victims of its exclusionary tendencies. They must stand or fall on that much.

Under the litigation-oriented test of *Baker v. Carr*, these four petitioners could hardly be less suited to provide the district court with sharp presentation of the issues at a trial. If personal stake in the outcome, concrete adverseness and the concept of injury in fact from *Data Processing* are measured with a view to

[5] *Norwalk* declined to decide whether the association plaintiffs had standing. 395 F.2d at 937-38.

that practical end, then this constitutional challenge to fifteen years' of Penfield zoning, with all its complexities and wealth of local problems, must fall for the lack of standing of the petitioners.

B. ***Taxpayers***

Petitioners Vinkey, Reichert, Warth, Harris, and Ortiz sue as "property owners and taxpayers of the City of Rochester," claiming that they

> are aggrieved in that they are paying a greater proportionate share of real estate taxes to the City of Rochester than are other residents of the Rochester metropolitan area to their respective towns because the City of Rochester has and must continue to permit more than its fair share of tax abated housing projects within its territorial limits to meet the low and moderate income housing requirements of the metropolitan Rochester area by reason of the exclusionary practices of [respondents]. (A. 5).

As such, they have no standing to bring this lawsuit.[6]

The lack of standing of these taxpayer petitioners can be expressed largely in terms of a single decision, *Doremus v. Board of Education*, 342 U.S. 429 (1952). For non-federal taxpayer standing, *Doremus* requires direct financial injury to the taxpayer as a result of a measurable appropriation or disbursement by the government to which he is a taxpayer. Moreover, although the law relating to federal taxpayer standing first announced in *Massachusetts v. Mellon*, 262 U.S. 447 (1923), has been made subject to an exception in *Flast v. Cohen*, 392 U.S. 83 (1968), the law of *Doremus* remains solid. Indeed, that law was expressly reaffirmed in *Flast v. Cohen*.

Doremus, in which taxpayers challenged Bible reading in school under the Establishment Clause, was distinguished by

[6]None of the four *amici curiae* supports the taxpayer petitioners.

the Court from *Everson v. Board of Education*, 330 U.S. 1 (1947), another Establishment Clause case involving a law that provided for the reimbursement of parents of parochial school children for their expenditures for their children's public transportation to and from school, on the ground that *Everson* involved a "measurable appropriation or disbursement . . . occasioned solely by the activities complained of. This complaint does not." 342 U.S. at 434.

Doremus defined taxpayer's standing as follows:

> The taxpayer's action can meet this test, but only when it is a *good-faith pocketbook action. It is apparent that the grievance which it is sought to litigate here is not a direct dollars-and-cents injury but is a religious difference.* If appellants established the requisite special injury necessary to a taxpayer's case or controversy, it would not matter that their dominant inducement to action was more religious than mercenary. It is not a question of motivation *but of possession of the requisite financial interest* that is, or is threatened to be, injured by the unconstitutional conduct. We find no such *direct and particular interest* here. 342 U.S. at 434-35 (emphasis added).

In order to acquire standing as a taxpayer under *Doremus*, then, one must suffer measurable pocketbook injury as a direct result of a particular appropriation or disbursement; both the wrong done and the injury suffered, in other words, must be financial.

The taxpayer petitioners in the instant case allege neither measurable appropriation nor direct injury. Their claim is not that the City of Rochester spends too much money but that the City of Rochester does not tax all its property owners uniformly; their only claim against the Town of Penfield is that Penfield spends no money at all for services they favor. Any injury they may have suffered at the hands of the City of Rochester's tax collectors is in no way connected with — let alone directly caused by — the existence or operation of Penfield's zoning

ordinance. Indeed, any causal connection between Penfield's zoning practices and the tax burden upon residents of the City of Rochester is at best speculative and involves a number of intervening contingencies over which respondents have no influence whatever — the zoning, housing, taxing and spending practices of the City of Rochester and of other surrounding municipalities. Any injury to these taxpayers is by definition indirect and incapable of calculation.

The *Doremus* standards of directness and measurability were borrowed from *Massachusetts v. Mellon*, *supra*. That case involved a federal taxpayer's challenge to the Maternity Act, which entailed an expenditure of federal monies with the object of reducing maternal and infant mortality; the complaint alleged that the Act exceeded Congress's legislative power. This Court held that the plaintiff lacked standing:

> The party who invokes the [nullification] power [of a federal court] must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some *direct* injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. 262 U.S. at 488 (emphasis added).

The Court thought that the plaintiff's interest as a federal taxpayer was so remote and minuscule as not to give standing, but this was by contrast to the position of the local taxpayer: "The interest of a taxpayer of a municipality in the application of its monies is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate." 262 U.S. at 486, citing *Crampton v. Zabriskie*, 101 U.S. 601, 609 (1879).

The recognition given in *Massachusetts v. Mellon* to local taxpayers' potential standing does not, however, extend to the taxpayer petitioners here. The direct and immediate interest approved in that case was of a "taxpayer *of* a municipality in the application of *its* monies." 262 U.S. at 486. The City of

Rochester taxpayers in the present case are not "of" Penfield, and they do not attack an "application" of Penfield's monies.

Flast v. Cohen, *supra*, involved the standing of federal taxpayers to challenge, under the Establishment Clause, provisions of the Elementary and Secondary Education Act of 1965 that authorized grants to support education in parochial schools. Although it was not a local taxpayer case, *Flast* is significant: before *Flast*, no federal taxpayer had ever been recognized to have standing as such to challenge federal legislation, and the doctrine of *Massachusetts v. Mellon*, that a federal taxpayer's interest in federal spending measures is too remote and minuscule to support standing, did not invite exceptions. Since *Massachusetts v. Mellon* provided important underpinnings for *Doremus*, it is worth examining the effect of *Flast* upon *Doremus*.

This Court in *Flast* expressly endorsed *Doremus*. The federal taxpayer

> will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, §8, of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute. This requirement is consistent with the limitation imposed upon state-taxpayer standing in federal courts in *Doremus v. Board of Education* . . . 392 U.S. at 102.

The subject of the taxpayer's alleged grievance must be, then, under *Flast* as well as under *Doremus*, a spending measure or a taxing measure. Potential or speculative financial implications are insufficient. *Flast*, or at least *Flast's* result, has been recently re-affirmed by this Court, *Schlesinger v. Reservists Committee to Stop the War*, —— U.S. ——, 94 S. Ct. 2925 (1974); *United States v. Richardson*, —— U.S. ——, 94 S. Ct. 2940 (1974), and once again taxpayers not asserting Establishment Clause claims were denied standing. A zoning ordinance is not the sort of legislation which *Doremus* and *Flast*, especially when read in

light of *Schlesinger* and *Richardson*, authorize a taxpayer to challenge.

Doremus set up a second, and cumulative, requirement for the taxpayer plaintiff. Not only must the measure under attack be a spending or taxing measure, but also the taxpayer must allege a good faith pocketbook injury. This Court did not dwell on good faith pocketbook injury in *Flast*, however, but spoke rather of the status asserted by the plaintiff and the nexus between not only that status and the challenged law, but also that status and the legal ground of the plaintiff's case. That legal ground in *Flast* was the Establishment Clause, and that fact is important in distinguishing cases.

In fact, the Court began with just this premise: "in ruling on standing, it is both appropriate and necessary to look to the substantive issues . . . to determine whether there is a logical nexus between the status asserted and the claim sought to be adjudicated." 392 U.S. at 102. The Court immediately said that "standing requirements will vary in First Amendment religion cases depending upon whether the party raises an Establishment Clause claim or a claim under the Free Exercise Clause." *Id.* This conclusion was contrasted with taxpayer's cases in particular: in Establishment Clause cases, as opposed to the general run of federal taxpayer cases, it does not matter whether the taxpayer's financial stake is remote and minuscule because, in Madison's words, "the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever." *Id.* at 103.

There is a logical or doctrinal basis, therefore, for finding standing in an Establishment Clause case even in the absence of good faith pocketbook injury, because the Establishment Clause is a specific constitutional limitation imposed upon Congress's taxing and spending power: it exists specifically for the benefit of the federal taxpayer.

Apart from the doctrinal basis for allowing this kind of plaintiff's status to suffice in Establishment Clause cases, there is a practical basis as well. Because of the nature of the clause governmental breach of it does not necessarily or usually result in the sort of individualized injury that confers standing in other kinds of cases.[7] Thus, for example, even when there is no coercion of school children to participate in official prayers or Bible-reading exercises, parents of the children have Establishment Clause claims and the standing to raise them. *Engel v. Vitale*, 370 U.S. 421 (1962); *School Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963). *Flast*, *Engel* and *Abington* reflect an understanding that the Establishment Clause checks in its incipiency forbidden governmental conduct in the area of religion. It intercepts such conduct before the Free Exercise Clause has come into play and before plaintiffs of the ordinary kind have been created. The citizenry at large and, in any event, taxpayers are adversely affected by any establishment of religion or laws respecting such an establishment even though their individual free exercise of religion is not affected; for establishment inflicts an injury in fact which is by its nature abroad in the land.

Even if the *Doremus* doctrine were altered by *Flast*, therefore, it would be altered as it related to taxpayer standing in Establishment Clause cases and not as it affected taxpayer standing in other kinds of cases. See also *Schlesinger v.*

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[7] *Flast* is not unique in this view of the plaintiff's relationship to his Establishment Clause claim. In *Engel v. Vitale*, 370 U.S. 421, 430 (1962), this Court noted that "The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not." In *School District of Abington Township v. Schempp*, 374 U.S. 203, 223 (1963), this Court quoted *Engel* with approval and added: "The distinction between the two clauses is apparent — a violation of the Free Exercise Clause is predicted on coercion while the Establishment Clause violation need not be so attended." See also *Schlesinger v. Reservists Committee to Stop the War*, —U.S.—, 94 S. Ct. 2925 (1974); and *United States v. Richardson*, —U.S.—, 94 S. Ct. 2940 (1974).

Reservists Committee to Stop the War, supra; United States v. Richardson, supra.

In a case like the instant one, involving a challenge to a zoning ordinance mounted under the Fourteenth Amendment and federal civil rights statutes, there are neither doctrinal nor practical considerations which favor departure from the *Doremus* injury test of standing. The constitutional and statutory provisions on which the complaint rests all, unlike the Establishment Clause, focus on the individual; real violation of them singles out and hurts specific people. No dispensation from the usual requirement of taxpayer standing is needed to produce plaintiffs who can ride herd on the government to enforce these laws.

Nothing in the nature of the laws relied upon here, moreover, would justify such a dispensation. Even if the federal taxpayer status recognized by the Court in *Flast* were not regarded as satisfying the "injury in fact" test of *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970), and *Barlow v. Collins*, 397 U.S. 159 (1970), it did serve to give standing to challenge federal disbursements of tax moneys as violative of the Establishment Clause, because that clause was intended to prohibit just such spending. There is not, however, any logical nexus between the status asserted by petitioners Vinkey, Reichert, Warth, Harris, and Ortiz as Rochester taxpayers and their claim that the zoning ordinance of the Town of Penfield violates the Fourteenth Amendment rights of persons other than themselves.

These taxpayer petitioners are not taxpayers of the Town of Penfield, as *Doremus* requires; they are not challenging a taxing or spending measure, as *Doremus* requires; they have not alleged a direct and measurable pocketbook injury as *Doremus* requires.

Before this Court the taxpayer petitioners have shifted their ground; they now say that they are not asserting taxpayer status

at all. Rather, they say, their real estate taxes cause them financial injury that satisfies the injury in fact test of *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970), and *Barlow v. Collins*, 397 U.S. 159 (1970). But that is the claim in all taxpayer standing cases; taxpayer plaintiffs always seek standing because they have to pay taxes. It is, after all, the essence of taxpayer status that the taxpayers have to pay to the extent that their governments adopt taxing and spending measures. If the City of Rochester chooses to have tax-abated housing in excess of its "fair share," whatever that may be, the City's taxpayers must bear the cost of that choice. And if that causes them the type of injury recognized by *Doremus*, their remedy is against the City of Rochester, not against the rest of the world. Petitioners' attempt to assert taxpayer injury without satisfying any of the *Doremus* taxpayer standing requirements must fail. None of them possesses any of those characteristics which turn taxpayers into plaintiffs with standing to sue.

C. *Organizational Petitioners*

Three organizations, petitioners here, also seek standing to challenge Penfield's zoning ordinance and practices. The standing principles discussed above apply, of course, to organizations as well as to individuals, and the organizational petitioners clearly lack standing.

It is unclear precisely to what extent an organization can have standing merely to represent its members' interests, to serve as a substitute plaintiff in their stead, when some or all of the members could easily institute their own action. The court below thought that an organization has such standing only when it can demonstrate "special circumstances," *Warth v. Seldin, supra*, 495 F.2d at 1194, 1195, and such an approach makes sense to us.

To be sure, this Court has stated as *dictum* that "[i]t is clear that an organization whose members are injured may represent

those members in a proceeding for judicial review." *Sierra Club v. Morton*, *supra*, 405 U.S. 727, 739 (1972). But the Court cited only *NAACP v. Button*, 371 U.S. 415 (1963). *Button* involved an alleged statutory infringement of the right of the NAACP, its members, and its lawyers to associate together for the purpose of assisting persons who seek legal redress of their constitutionally guaranteed and other rights. But the right to associate, although certainly a right that vitally affects an organization, is a right peculiarly of the organization's members; it is, after all, their association that creates the organization. Accordingly, this Court held that the NAACP had standing to assert its own rights and the rights of its members. 371 U.S. at 428.

Button, in turn, relied on *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296 (1961); *Bates v. City of Little Rock*, 361 U.S. 516, 523 & n.9 (1960); and *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 458-60 (1958). Each of those cases, however, involved a statute requiring disclosure of membership lists, over a claim that such disclosure would result in economic or other reprisals. Requiring the members themselves to claim the right to withhold the membership lists might have rendered the standing requirement itself unconstitutional,[8] and the organization was the only party available to make the claim.

No such special circumstances are involved in the present case. None of the organizational petitioners claims rights that are vital, or even important, to its organizational existence. Each seeks merely to substitute for its members.

Further, no organizational petitioner possesses any characteristics other than an interest in a problem. None even approaches the type of organizational characteristics involved in

[8] "To require that it [the right to withhold membership lists] be claimed by the members themselves would result in nullification of the right at the very moment of its assertion." *NAACP v. Alabama ex rel. Patterson*, *supra*, 357 U.S. at 459.

National Motor Freight Traffic Ass'n., Inc. v. United States, 372 U.S. 246, 247 (1963).

In any event, we think it clear that, when an organization has standing to represent its members, it has only such standing as its members would have. In other words, an organization does not increase or create standing by claiming it derivatively.

1. *Metro-Act*

Petitioner Metro-Act of Rochester, Inc. ("Metro-Act") was an original plaintiff in the district court, quite obviously serving as the action's promoter. It is a social-action organization "with its main purpose being to alert ordinary citizens to problems of social concern" (A. 8) by "inquir[ing] into the reasons for the critical housing shortage for low and moderate income persons in the Rochester area" and by "urg[ing] action on the part of citizens to alleviate the general housing shortage for low and moderate income persons." (A. 8-9). Despite these interests, the areas of Metro-Act's social concern are far broader than housing or zoning:

> Among its stated purposes are 1) to achieve democracy for all irrespective of race, religion or national origin; 2) to encourage the Rochester community to provide better housing, better education, greater employment opportunities and to secure human and civil rights for all its residents. (A. 181).[9]

Metro-Act's efforts in the housing area began with a 1966 "fact sheet" (A. 185-86, 196-200) comparing low-income housing in Rochester and other upstate New York cities. Its initial focus was on the City of Rochester in an attempt to persuade the City of the need for and desirability of additional low-income housing within the City. (A. 186-87, 201-32). When

[9] Metro-Act's presently "active issues" are "housing, environment, tax reform, media responsibility, national priorities, individual freedoms, Community Chest, education and membership." (A. 183).

little progress was attained within the City of Rochester, Metro-Act shifted its attention to the suburban townships and in February 1969 began advocating federally assisted rent subsidy leasing programs. (A. 187-88, 233-44).

In April 1970 the Metropolitan Housing Committee published its report (A. 188-89, 245-320), which, among other things, recommended formation of a housing council. Metro-Act supported this recommendation and, when the Housing Council was formed in the summer of 1971, became a charter member. (A. 189, 322). Metro-Act initiated the Housing Council's "Political Action Committee" (A. 189-90), which, together with Metro-Act, worked with the Monroe County Legislature on the County's housing problems. (A. 190-91, 324-56).

Finally, Metro-Act's focus fell on Penfield. Discussions were held "[a]ll during the month of December 1971 and early January 1972," and a meeting was held in early January 1972. (A. 193). In response to town leaders' request for "a concrete proposal for change" (A. 194) to Penfield's 81-page printed zoning ordinance (A. 36-116), Metro-Act submitted a 4 1/4-page discussion paper (A. 357-61), which commenced with an express threat of litigation. (A. 358). When a scheduled January 18, 1972, meeting had to be cancelled and the Town's Supervisor suggested a February alternative date (A. 194-95), Metro-Act commenced this action on January 24, 1972. (A. v)

Metro-Act, then, clearly has nothing more than an "interest in a problem." That is insufficient for standing purposes. *Sierra Club v. Morton, supra*, 405 U.S. at 739. And, with due respect to what respondents and we believe to be Metro-Act's sincerity and dedication to the social issues it advocates, it is, we fear, precisely that type of "other bona fide 'special interest' organization however small or short-lived" that this Court contrasted with the Sierra Club, "a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's

depredations," 405 U.S. at 739, even as standing was denied the Sierra Club.

Metro-Act asserts various bases in its hope that this Court will award it standing. The only basis Metro-Act asserts on its own organizational behalf is that it, as an organization, must pay higher real estate taxes to the City of Rochester (A. 30), even though Metro-Act fails to allege that it owns any real property, and even though it is a non-profit organization. (A. 8, 181). In any event, the lack of standing of City of Rochester taxpayers to challenge the Town of Penfield's zoning ordinance and practices is discussed above, and that discussion is totally applicable here.

Metro-Act also claims standing to represent its members, which, in special circumstances, it may do to the extent its members would have standing. No special circumstances are present in any of Metro-Act's purported bases. First, Metro-Act claims to derive standing because some of its members are taxpayers of the City of Rochester.[10] But, as discussed above, such individuals lack standing in their own right, and Metro-Act cannot gain more standing here. Second, Metro-Act claims to derive standing because some of its members are low-income residents of the City of Rochester who might want to move to Penfield. But, as discussed above, such individuals lack standing in their own right, and Metro-Act cannot gain more standing here.

Third, Metro-Act claims to derive standing because some of its members[11] are residents of the Town of Penfield. Of course, the classes sought to be represented by the named plaintiffs did not include any Penfield residents (see A. 9), and the complaint

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[10] As to this basis, Metro-Act is an unnecessary plaintiff. At least one of the petitioners, Robert J. Warth, who claims individual standing as a City of Rochester taxpayer (A. 4, 30-31) is a member, indeed president, of Metro-Act. (A. 180).

[11] Apparently about 32 Metro-Act members, rather than the "many" referred to by petitioners (Br. 13), are Penfield residents. (A. 183).

makes no mention of any Penfield resident, whether Metro-Act member or not, other than respondents.[12] One of the affidavits, however, states that Metro-Act members desire to "be spared an eventual repeat of ghetto confrontations and riots" (A. 184) (which, of course, occurred in Rochester (A.181), not Penfield) and added that

> Metro-Act supports quality, integrated education. Metro-Act members believe that it is to their own children's benefit to learn early in life to come to healthy terms with different races and ethnic groups. (A. 184).

Metro-Act's attempt to construct these meager and generalized allegations into standing in a zoning case is an obvious belated attempt to restructure its complaint on appeal to emulate the successful plaintiffs in *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972), decided by this Court several months after the instant complaint was filed. But no *Trafficante*-type claims are raised in the complaint. No Penfield resident is a plaintiff here, although Metro-Act doubtless could have secured a Penfield plaintiff. Ann McNabb, a Metro-Act member and Penfield resident (A. 615), submitted an affidavit for petitioners which takes in the present appendix, with exhibits, 309 pages (A. 615-924). But Ms. McNabb is not a plaintiff and seeks no variance from Penfield's zoning ordinance in order to subdivide her property.

Trafficante was an action under Section 810 of the Civil Rights Act of 1968, 42 U.S.C. § 3610. This Court expressly declined to rule on the standing questions under 42 U.S.C. § 1982. 409 U.S. at 209 n.8; *id.* at 212 (White, *J.*, concurring). Petitioners here did not rely below and do not rely in this Court upon the 1968 Act. More importantly, *Trafficante* granted standing only to residents of "the same housing unit," 409 U.S. at 209, 212, that is charged with racial discrimination. It was this focus on a particular housing unit that gives that case

[12]Metro-Act made a standing claim on behalf of its Penfield members for the first time in the Court of Appeals. *Warth v. Seldin, supra*, 495 F.2d at 1193 n.7.

"concrete adverseness," *Baker v. Carr*, 369 U.S. at 204, that provides the who, when, where, and why of alleged racial discrimination which are totally lacking here. Racial discrimination cases are too important to be tried "in the air." *Giles v. Harris*, 189 U.S. 475, 486 (1903). Metro-Act's belated attempt to discover standing from within Penfield fails for lack of concreteness.

2. *Housing Council*

The original plaintiffs moved the district court (A. 165-69) for an order making petitioner Housing Council in the Monroe County Area, Inc. ("Housing Council") an additional party plaintiff, apparently pursuant to Fed. R. Civ. P. 19(a). No amendment to the complaint was proposed, however, and, had the motion been granted, Housing Council would have been a plaintiff literally asserting no claims. The motion was, of course, denied. (A. 951).

Housing Council is a not-for-profit corporation (A. 170) organized and operated

> for the purpose of receiving, maintaining, or administering one or more funds of real or personal property, or both, and using and applying the whole or any part of the income and principal thereof for the charitable purpose of combating community deterioration, eliminating racial and economic prejudice and discrimination in housing and lessening the burdens of government . . . (A. 172).

To this end, Housing Council promotes studies of and gives leadership to community planning, seeks to coordinate governmental, public, and private housing efforts and considerations, and provides or facilitates technical assistance to governmental, public and private housing efforts. (A. 172-73).

Housing Council is clearly a special interest group; in the words of its executive director, "[b]ecause of the interests of [its] constituent groups, Housing Council has a special interest in this

litigation . . . ." (A. 175). But this, of course, is insufficient to confer standing. *Sierra Club v. Morton, supra.*

Other than its special interest in housing, Housing Council does not claim standing in its own right. Rather, it seeks to derive standing from its members. First, Metro-Act is a Housing Council member (A. 178), but Housing Council can have no greater standing than does Metro-Act. Second, some of Housing Council's members are governmental agencies (A. 174-75, 177-79), but there is no allegation of how any of them have been or might be injured, except, of course, for their own special interests in the area. Third, some of Housing Council's member organizations are themselves made up of low and moderate income persons (A. 175), although there is no indication as to their places of residence. But, as discussed above, low and moderate income persons lack standing in their own right, and Housing Council cannot gain increased standing by its double derivative claim.

Last, some of Housing Council's members have been "or hope to be" involved in the development and construction of low and moderate income housing. (A. 174). Except for one, there is no indication of where the prospective sites are located, whether the sites are even in Penfield, whether applications for variances or building permits have been made and, if so, the result. Such recitations would not be formalistic requirements; they would supply the crucial "concrete adverseness," *Baker v. Carr, supra,* 369 U.S. at 204, that is lacking in this action by providing the where, when and why of respondents' alleged "discriminations." More than perhaps most fields, home construction does not take place "in the air," *Giles v. Harris, supra,* 189 U.S. at 486, and zoning considerations are concerned with specific parcels and specific proposed projects.

One Housing Council member, however, Penfield Better Homes Corporation, is identified as having actually attempted to secure approvals for moderate income housing within Penfield. (A. 174). But Penfield Better Homes Corporation is a nonprofit corporation (A. 616) and obviously cannot have the type of economic injury recognized in, for example, *Data Processing* and *Barlow v. Collins.*

Further, Penfield Better Homes Corporation's "proposal" simply lacks the requisite degree of specificity necessary to meaningful consideration in a zoning case. The proposal (A. 849-59) speaks only in the most general terms. To be sure, a specific site is mentioned as the one "we have in mind" (A. 852), but there is no indication as to its ownership. Although the proposal names a builder, general contractor, and architect (A. 853), there is no indication that planning had proceeded beyond a very general site plan (A. 854). Indeed, although the proposal hoped for Federal Housing Administration assistance (A. 630, 853), there is no indication that application to the FHA was ever made. An affidavit refers to "comprehensive studies" (A. 630), but these involved only a soil analysis (A. 860-63), a traffic count at respondents' request (A. 864-65), and, incredibly, a legal opinion (A. 866-80). These preliminary thoughts, even when added together, are far less than the concrete plans and specific preparedness of the developers, builders, and landowners who have been granted standing by the lower courts in other cases.[13]

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[13]These cases, discussed above at pp. 20-25, include *United Farmworkers of Fla. Housing Project, Inc. v. City of Delray Beach,* 493 F.2d 799 (5th Cir. 1974); *Morales v. Haines,* 486 F.2d 880 (7th Cir. 1973); *Park View Heights Corp. v. City of Black Jack,* 467 F.2d 1208 (8th Cir. 1972); *Crow v. Brown,* 457 F.2d 788 (5th Cir. 1972); *Kennedy Park Homes Ass'n., Inc. v. City of Lackawanna,* 436 F.2d 108 (2d Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971); *Dailey v. City of Lawton,* 425 F.2d 1037 (10th Cir. 1970); *Southern Alameda Spanish Speaking Org. v. City of Union City,* 424 F.2d 291 (9th Cir. 1970); *Ranjel v. City of Lansing, 417 F.2d 321 (6th Cir. 1969), cert. denied,* 397 U.S. 980, *rehearing denied,* 397 U.S. 1059 (1970); *Sisters of Providence v. City of Evanston,* 335 F. Supp. 396 (N.D. Ill. 1971).

In any event, the Penfield Planning Board held two public hearings on the "proposal," in September 1969 and November 1969. (A. 629-31). Thereafter, the Planning Board denied the request because it felt that townhouses "would constitute an inappropriate use of this land and would not be consonant with existing character of the neighborhood," "would create traffic problems within the area," and "would cause serious erosion problems during and after construction."[14] (A. 881-82). Thereafter, Penfield Better Homes Corporation asked the Town Board for a further public hearing,[15] which, because the Planning Board had already held two public hearings, was denied in January 1970.[16] (A. 883-84). Thereafter, the record does not disclose any steps taken by Penfield Better Homes Corporation. It may have had further administrative remedies, and it certainly had the right to institute a special proceeding in state court, N.Y. Civ. Prac. Law & Rules Art. 78, within four months, N.Y. Civ. Prac. Law & Rules § 217. But that time has long since expired. If Penfield Better Homes Corporation cannot litigate its own claims, surely Housing Council cannot derive derivative standing to sue in its behalf.

3. *Home Builders*

Petitioner Rochester Home Builders Association, Inc. ("Home Builders") moved the district court for an order, pursuant to Fed. R. Civ. P. 24, allowing it to intervene as a party plaintiff. (A. 134-38). Its proposed intervenor's complaint

[14] Petitioners make no showing of what steps, if any, they would take to avoid the problems raised in the soil study. (A. 860-63).

[15] It does not appear from the record that Penfield Better Homes Corporation ever actually requested rezoning of the desired site.

[16] Both the Planning Board and the Town Board specifically stated that they recognized the need for moderate income houses in Penfield. (A. 882, 884).

(A. 144-64) is similar to the complaint of the original plaintiffs. The motion was denied. (A. 951).[17]

Home Builders is a nonprofit trade association (A. 145) whose members are active in the home construction industry in the Rochester metropolitan area (A. 146). Its members have built either "substantially all" (A. 142-43) or 80% (A. 147) of the private housing units constructed in the Town of Penfield during the last 15 years. Approximately eleven of its members have been active in the home construction industry in Penfield. (A. 146). Home Builders makes no claim that it has any statutory or other special role in Penfield's housing industry or that it has ever played any role on its members' behalf, whether before zoning boards, before planning boards, or in the courts. Compare *National Motor Freight Traffic Ass'n., Inc. v. United States, supra*, 372 U.S. at 247.

Home Builders claims no organizational standing in its own right; rather, it claims only derivative standing from its members, who, it alleges, have been injured because they have been prevented from constructing and selling or renting low and moderate income housing in Penfield. (A. 153, 156). But there is absolutely no specificity — there is no indication of what contractors are prepared to build what projects on what sites or what efforts have been taken to secure Town approval. Even the low-income residents of the City of Rochester at least allege that they "hope" or "desire" to move to Penfield. But the Home Builders do not even assert that any of its members even desires, let alone is prepared, to construct low-income housing in Penfield. This is truly "a mere declaration in the air," *Giles v.*

[17] The district court denied the motion for intervention both because of Home Builders' lack of standing and in the exercise of its discretion, pursuant to Fed. R. Civ. P. 24, because intervention would unduly delay or prejudice the adjudication of the rights of the original parties. (A. 951). The court of appeals did not reach the Rule 24 issue. *Warth v. Seldin, supra*, 495 F.2d at 1195. We do not read petitioners' brief as arguing that Home Builders should be allowed to intervene even if all the other petitioners lack standing.

Harris, supra, 189 U.S. at 486, coming nowhere near the "concrete adverseness," *Baker v. Carr, supra*, 369 U.S. at 204, required.[18]

Reference is made in the record to a few specific projects, in various stages of proposal, although there is no indication that any of them involved Home Builders members. Each is either moot or unripe, and none gives standing to Home Builders. Joseph Audino submitted a Planned Unit Development ("PUD") complex proposal (A. 623-24), as to which, after repeated consideration and various amendments (A. 624-28, 752-839), an agreeable compromise was reached (A. 627-28, 840). O'Brien Homes, Inc. submitted an apartment proposal (A. 633-36, 885-96) which, after modification (A. 636, 902-07), was on the Planning Board's table (A. 906) and had been referred to the Monroe County Planning Council for its recommendation. (A. 636). The Standco PUD complex proposal, which was approved for rezoning (A. 636), was awaiting a further public hearing for final approval (A. 637, 920). The Rock Lake PUD complex proposal was approved for rezoning (A. 636), but the developer apparently abandoned the proposal as economically unfeasible. (A. 637). An application by Zuric Development Corporation to rezone land to allow for smaller single-family houses in the $25,000 — $30,000 price range (hardly low-moderate income housing) was denied (A. 639-39, 921-23), "notwithstanding the Board's interest in the concept but upon the grounds that sewer capacity is unavailable at present." (A. 922). Last, an application by Angelo Castronova for rezoning for a proposed apartment complex (A. 639, 924) was viewed with disfavor "because of the unavailability of sanitary sewer capacity." (A. 924).

These sketchy outlines of various shifting proposals in an area that demands concrete specifics for meaningful evaluation

[18]Compare the specific allegations by specific builders in cases where builders have been granted standing, discussed at pp. 20-25 above.

cannot possible serve to give Home Builders standing to launch a broad-scale attack on an ordinance and 15 years of practice.

CONCLUSION

Although the merits of the case are not now before the Court, we urge the Court to keep in mind that this is a *zoning* case. As this Court has noted before, zoning in our federal system is a subject uniquely of local concern and resolution. *E.g., Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). The Town of Penfield's zoning ordinance, which is "fairly typical for a suburban community," *Warth v. Seldin, supra*, 495 F.2d at 1189, is no doubt imperfect, but the "problems of government are practical ones and may justify, if they do not require, rough accomodations — illogical, it may be, and unscientific." *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69-70 (1913); *Dandridge v. Williams*, 397 U.S. 471, 485 (1970). In such a complex area as zoning, no perfect alternatives exist; and federal judges are less well situated than local legislators and administrators to resolve the conflicting problems of municipal land use "for reason that they lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to" these problems. *Cf. San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 41, *rehearing denied*, 411 U.S. 959 (1973).

Of course the language used by this Court in *Dandrige* and *Rodriguez* is quoted from a different constitutional context — not in reference to standing questions under Article III but to questions of the appropriate form of review under the Fourteenth Amendment. Because of the intractable problems of many of the areas committed to local governance, federal courts will not ordinarily scrutinize local solutions strictly in Equal Protection cases but will give them the benefit of the constitutional doubt. This is so in the area of local zoning. *Village of Euclid v. Ambler Realty Co., supra; Village of Belle Terre v. Boraas, supra.*

In itself this is another question, not presently before the Court. But the wisdom which underlies this Court's usual form of Fourteenth Amendment review is relevant to the question of standing and in particular inheres in the test of *Baker v. Carr*, *supra*. Whether the presumption is in favor of or against constitutionality once a trial has been reached, the courts require plaintiffs who, because of their personal stake and their concrete adverseness with defendants, can assure a sharp presentation of the issues which will illuminate difficult constitutional questions in terms of the practical operation of the legislation under attack.

Where, as here, the legislation is complicated and highly local, and the Fourteenth Amendment challenge is broadside, effective constitutional litigation demands plaintiffs with direct and personal grievances in concrete opposition with the defendants over identified actions that really occurred. This is not such a case.

Respectfully submitted,

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In The

Supreme Court of the United States

October Term, 1974

No. 73-2024

ROBERT WARTH, et al.

Petitioners,

vs.

IRA SELDIN, et al.

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

ARGUMENT

This is a racial discrimination case. Plaintiffs' allegations of racial discrimination by the defendants are uncontroverted in the pleadings.[1] As a matter of law, in the posture of this case, plaintiffs' allegations of race discrimination must be accepted as true. *Jenkins v. McKeithen*, 393 U.S. 411, 89 S.Ct. 1843 (1969).

The defendants have enacted and are administering a zoning ordinance for the Town of Penfield that on its face and as administered is calculated to exclude minorities from residing in

[1] Defendants filed only a conclusory attorney affidavit in support of their motion to dismiss.

the town. Efforts of the defendants have been quite successful. According to United States Census figures, the population of the Town of Penfield in 1960 was 12,601 with 23 of that total being minority persons; the population of the Town of Penfield in 1964 was 17,337, with 22 of that total being minority persons; the population of the Town of Penfield in 1970 was 23,782, with 60 of that total being minority persons. (A. 470, 583 — 588). The total minority population of the Town of Penfield over this ten year period has always been less than 1/2 of 1%.

The root cause for the inflexible zoning ordinance and its rigid application is, as the Metropolitan Housing Committee observed about Penfield and other towns in the Rochester area, racial prejudice. (A. 276, 277) The Town of Penfield has even officially examined its exclusion of minority, low-income persons and concluded that it must do its part in building its "fair share" of housing for minority, low-income persons; it has recognized that the only way to end the exclusion is by fundamental amendment and change of its rigid zoning ordinance and its rigid application of that ordinance. (A. 487, 500, 501, 503 — 506, 508, 509)

In a study entitled Report of Penfield Housing Task Force on Moderate Income Housing and published by the Town of Penfield, June 5, 1972, the Town of Penfield calculated that its "fair share" of housing for minority, low-income persons, would be 2,000 units in the 1970 — 1980 period. (A. 502) The only feasible way to provide for this construction is by amendment of the zoning ordinance.

> "Penfield's Zoning Ordinance does not presently provide for this variety of housing styles and sizes. They could be accommodated by granting variances to the Ordinance; however, the frequent granting of variances is generally considered contrary to good zoning and planning practices. Instead we recommend that the Penfield Town Board adopt changes to the present Zoning Ordinance necessary to accommodate the broad variety of housing styles, sizes, and densities earlier recommended. These changes should be adopted as early as possible." (A. 508, 509)

This is a case of zoning to segregate by race that the Court alluded to in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 6, 94 S.Ct. 1536, 1539 (1974). This case is not, therefore, as defendants urge, simply an ordinary zoning case which should lead this Court to accept the ordinance at face value because zoning "... is a subject uniquely of local concern and resolution". (Respondents' Brief at 45.)

This Court has not tolerated and does not tolerate governmental participation in racial discrimination in any degree, directly or indirectly, because the Constitution forbids it. *Norwood v. Harrison*, 413 U.S. 455, 93 S.Ct. 2804 (1973) and *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125 (1960).

The Court did not adopt in *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691 (1962), as defendants suggest (Respondents' Brief at 4 — 9) a special, practical test of standing for civil rights cases requiring the Court's projecting a decision on the merits in considering a question of standing. A plaintiff in a civil rights case is certainly not subject to a more rigorous standing requirement than a plaintiff in any other case. See *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 90 S.Ct. 827 (1970); *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832 (1970); *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 93 S.Ct. 2405 (1973).

Faced with the defendants' rigid zoning ordinance and its inflexible application, the question then becomes what can be done to prevent further discrimination. Everything that could possibly have been done has been tried — all to no avail. Each minority plaintiff has actively sought housing in the Town of Penfield; there is none available. (A. 362 — 435) Penfield Better Homes, a member of plaintiff Housing Council in the

Monroe County Area Inc. located land, retained a builder, general contractor, architect and zoning authority in an effort to gain approval from the Town of Penfield for construction of Federal Housing Administration assisted housing. The defendants rejected the proposal as inconsistent with the neighborhood. (A. 629 — 633)

The Penfield Planned Unit Development was hailed by some as a possible opening in the town for the relaxation of the rigid, exclusionary ordinance. (A. 621, 622) However, when builder-members of the intervenor plaintiff Rochester Home Builders Association sought to submit proposals under the Planned Unit Development concept, the defendants amended the ordinance to insure that the general exclusion of minorities would be maintained. (A. 623 — 642) Because of the defendants' additional restrictions on these proposed developments, the developments have either been abandoned, delayed indefinitely, or transformed into exclusive housing.

Associations of persons including plaintiff Metro Act of Rochester, Inc. (Metro-Act) and Housing Council in the Monroe County Area, Inc. (Housing Council) have decried the continued efforts of the defendants to maintain their restrictive, exclusive zoning practices and have tried to persuade a different course. (A. 627 — 629) Yet the defendants proceeded to make their zoning ordinance more restrictive and have continued, project by project, to insure exclusive housing patterns. The defendants ignored the concrete suggestions of plaintiff Metro Act for changes in the ordinance. (A. 193 — 195) The Town of Penfield has acknowledged the exclusiveness of its ordinance (A. 487 — 573) but its study remains unheeded.

In these circumstances, it is an anomaly indeed for the court below to have focused its decision on the lack of a housing start. There is no "housing start" in the Town of Penfield that preceded th institution of this lawsuit because, as plaintiffs allege, the defendants have thwarted every attempt to build

multiracial, low income housing. In fact, intervenor plaintiff Rochester Home Builders Association alleges that the defendants threatened to cease any further co-operation with builders on the construction of exclusive housing in the Town of Penfield if this lawsuit were pursued. (A. 158, 159)

Frustrated at every juncture in efforts to end the exclusionary zoning of the defendants, those persons and organizations directly injured by the discrimination initiated this lawsuit. Those with the most at stake are the minority persons, Ortiz, Broadnax, Reyes, and Sinkler who are relegated to residing in inner city, ghetto environments of uncontrolled violence, declining municipal services and poor schools, for example. The City of Rochester property owners not only suffer from the declining city environment, but also have the pocketbook injury of paying ever increasing property taxes to buy city services as City of Rochester revenue bases are increasingly reduced by tax abated housing. Finally, members of the organizational plaintiffs are directly injured by the defendants' racial discrimination insofar as they have been deprived of the benefits of interracial associations, the loss of business opportunities in the construction of housing, and profits derived from those business opportunities. Defendants argue the lack of plaintiffs' standing only by ignoring the substantiated allegations of direct injury to each plaintiff in the record.

POINT I

Low income minority persons are the immediate victims of defendants' racially discriminatory and exclusionary practices and policies and, as such, have standing to seek judicial review of those practices and policies.

Plaintiffs Ortiz, Broadnax, Reyes and Sinkler are black or Spanish-surnamed persons of low or moderate income who have sought housing in Penfield, but have been excluded because of their race and economic status. As a direct result of defendants' racially discriminatory and exclusionary zoning practices and policies, these individuals are confined to the decaying inner city of Rochester, New York, which consists of substandard housing, inadequate community services (A. 416 — 417, 425 — 426, 442), uncontrolled violence (A. 442 — 447), and inferior education (A. 433, 454)

Initially, defendants contest the standing of these plaintiffs on the ground that they exerted only "casual efforts" in searching for housing in Penfield (Respondents' Brief at 11). Plaintiffs, of course, challenge any unsupported assertion that their search for decent housing was "casual." More importantly, defendants' concentration on the extent of plaintiffs' efforts indicates that defendants have lost sight of the procedural posture of this case. This matter was not tried, but rather was decided on the basis of a motion to dismiss, pursuant to Rule 12 of the Federal Rules of Civil Procedure. In these circumstances, the material allegations of the complaint and supporting affidavits must be accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 89 S.Ct. 1843 (1969).[2] These allegations reveal that the plaintiffs sought to escape the inner city environment and find housing in Penfield

[2]Defendants suggest that their Rule 12(b) motion was converted into a Rule 56 summary judgment motion because the District Court decided on the basis of affidavits, as well as the complaint. Even assuming that this conversion process occurred, the District Court was required to accept plaintiffs' allegations as true since defendants submitted only an attorney's affidavit. See note 1, supra.

(A. 370, 417-418, 428, 453), but were denied because of their race and economic level. If plaintiffs are allowed the opportunity to proceed to trial, they will sustain the truth of these allegations. However, "[a]t this stage of the litigation we are not concerned with the truth of the allegations, that is, the ability of petitioners to sustain their allegations by proof. The sole question is whether the allegations entitle them to make good on their claim that they are being denied rights under the United States Constitution." *Gomillion v. Lightfoot*, 364 U.S. 339, 341, 81 S.Ct. 125, 127 (1960). Here, plaintiffs' allegations of discrimination entitle them to make good their claims that they are being denied rights under the Constitution and laws of the United States.

Defendants also assert that plaintiffs are simply suffering "injury by supposition" and that the "record is devoid of events." (Respondents' Brief at 15) Once again, defendants are ignoring the record and proceeding as if this case had been tried and the factual issues resolved in their favor.

The record is replete with instances of real concrete injury flowing directly from defendants' exclusion of multiracial low and moderate income housing. Plaintiff Ortiz was unable to find such housing near his job in Penfield and was forced to travel forty-two miles to work. (A. 375 — 377) The burdensome commuting problems and expenses are neither conjectural nor hypothetical. Similarly, defendants' exclusion of low income housing and denial of equal housing opportunities to low income, minority persons inflict injury upon Ms. Broadnax and her family. As a direct result, the Broadnax family is unable to escape from the deplorable housing conditions in the inner city and must live in a home with "leaks in the roof, bad wiring, roach infestation, rat and mice infestation, crumbling house foundation, broken front door, broken hot water heater, etc." (A. 410) Plaintiffs Sinkler and Reyes describe the similar hardships which they and their families are forced to endure as a

result of their inability to secure housing in Penfield. Such injury is hardly "injury by supposition."

Additionally, plaintiffs allege that their children are suffering real harm because they must attend the inferior Rochester schools, rather than the highly rated Penfield schools. (A. 453 — 455) The public schools in Rochester are so inadequate that Ms. Sinkler transferred her child to a parochial school even though she must pay the additional expenses of tuition and registration fee. (A. 488)

Finally, plaintiffs are suffering real, concrete injury in that they are the victims of defendants' racially discriminatory policies and practices. Defendants' mere passing reference to the racial discrimination claim (Respondents' Brief at 14 n.3) cannot obscure the uncontradicted allegations that the purpose and effect of defendants' zoning practices and policies are to exclude black and other minority individuals. Plaintiffs allege in paragraph fourteen of the complaint:

> "That the statute as enacted and/or administered by the defendants, has as its purpose and in fact, effects and propagates exclusionary zoning in said Town with respect to excluding moderate and low income multiple unit housing *and further tends to exclude low income and moderate income and non-white residency* in said town . . ." (Emphasis added) (A. 15)

Moreover, plaintiffs Ortiz, Broadnax, Reyes, and Sinkler specifically state in their affidavits that they have been excluded because of their race. (A. 363, 421, 434, 453) As plaintiff Ortiz states, ". . . my claim is that I, as a citizen of Spanish/Puerto Rican extraction am being denied the right and/or opportunity to reside in the Town of Penfield because of my race. . . ." (A. 363) The experts who have examined the ordinance agree that the law is "basically an inflexible control mechanism which has the effect of producing economically and *racially stratified housing arrangements* without apparent regard for the housing

needs either of its own citizenry or for the citizenry within the larger metropolitan community." (A. 944) (Emphasis added)

The complaint and affidavits allege a case of racial discrimination, as real and concrete as if defendants had passed an ordinance expressly excluding black and Spanish-surnamed persons from Penfield. Cf. *Gomillion v. Lightfoot*, supra; *Buchanan v. Warley*, 245 U.S. 60, 38 S.Ct. 16 (1917). The injury to these individuals is the very injury suffered by the plaintiffs in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686 (1954). There, the Court held that to separate individuals "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Id. at 494, 74 S.Ct. at 691.

In these circumstances, it is simply a callous indifference to the facts to state that these plaintiffs merely are suffering "injury by supposition." Here, as in *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208, 1216 (8th Cir. 1972), "[t]he individual plaintiffs have presented a strong case for consideration at this time. They allege that they are subject to the serious consequences of segregation in housing and education, as well as the economic consequences of decreasing access to jobs due to their inability to escape from the inner city." The injury inflicted upon these plaintiffs is certainly more substantial than the mere trifle which has served as the basis for standing in other cases. See *United States v. Students Challenging Regulatory Agency Procedures* (SCRAP), 412 U.S. 669, 689 n.14, 93 S.Ct. 2405, 2417 n.14 (1973); Davis, *Standing: Taxpayers and Others*, 35 U.Chi. L. Rev. 601, 613 (1968).

Defendants, however, suggest that, even if plaintiffs are injured, the injury does not flow from Penfield's zoning ordinance and defendants' implementation of that law. Such a notion ignores the direct line of causation between defendants' racially discriminatory and exclusionary practices and policies

and plaintiffs' hardships. As a direct result of defendants' actions, plaintiffs are unable to buy or rent homes in Penfield and are, thus, forced to (1) reside in substandard houses in a decaying inner city environment; (2) send their children to inferior schools; (3) forego employment opportunities; and (4) suffer the stigma resulting from racial discrimination. Manifestly, the line of causation is far more direct than in either *United States v. SCRAP*, supra, or *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832 (1970) where this Court held that the standing requirement had been satisfied. If defendants, here, believe that plaintiffs' allegations are untrue they should have "demonstrated to the District Court that the allegations were sham and raised no genuine issue of fact. We cannot say on these pleadings that [plaintiffs] could not prove their allegations, which, if proved, would place them squarely among those persons injured in fact . . . and entitled . . . to seek judicial review." *United States v. SCRAP*, supra at 689, 690, 93 S.Ct. at 2417.

It is further asserted that plaintiffs lack standing because there is no project proposal for low and moderate income housing. (Respondents' Brief at 25) Indeed, on this ground, defendants attempt to distinguish a number of lower court decisions which have held that potential residents of multiracial, low and moderate-income housing have standing to challenge practices and policies designed to exclude them. See, e.g., *Park View Heights Corporation v. City of Black Jack*, supra; *Crow v. Brown*, 457 F.2d 788 (5th Cir. 1972), affirming 332 F.Supp. 382 (N.D. Ga. 1971); *Dailey v. City of Lawton*, 425 F.2d 1037 (10th Cir. 1970).

Contrary to any suggestion by defendants, there have been project proposals for low and moderate income housing. (A. 629 — 642) These proposals, including the "Highland Circle Project" (A. 629 — 632), have been denied in accordance with defendants' practices and policies of excluding low-income minority persons, such as plaintiffs. It is alleged that defendants

> ". . . frustrated attempts at the building of and prevented opportunities for low and moderate income housing units in the Town of Penfield, amended the PUD ordinance so as to make more difficult the availability of low and moderate income housing through planned unit development in Penfield and have failed or refused to re-zone as might be required for the construction of low and moderate income housing in the Town of Penfield. *Such policies and practices have the effect of specifically excluding low and moderate income persons, blacks, Spanish-Americans, and other minorities from living in the Town of Penfield.*" (A. 641 — 642) (Emphasis added)

Moreover, the uncontradicted allegations of the Rochester Home Builders Association reveal that defendants have furthered their exclusionary and discriminatory plan by 1) refusing to grant variances and building permits; 2) failing to modify various zoning requirements, including minimum lot size, population density, use density and floor space; and 3) refusing to grant necessary tax abatements. (A. 154 — 155) These are the "decisive facts in this case, which at this stage must be taken as proved. . . ." *Gomillion v. Lightfoot*, supra at 346, 81 S.Ct. at 130. In these circumstances, the lack of a present project proposal is simply testimony to the success of defendants' racially discriminatory and exclusionary actions.

Defendants also would have this Court deny standing on the ground that the low income, minority plaintiffs do not have an interest in property. (Respondents' Brief at 25) Of course, plaintiffs lack an interest in property in Penfield. The very gravaman of their complaint is that defendants deny plaintiffs the opportunity to acquire an interest in land because of their race and economic status.

The absence of a specific project proposal or interest in land does not negate the controlling fact that plaintiffs are suffering actual injury resulting directly from defendants' illegal actions. It is this injury which assures that plaintiffs will present the

dispute in an "adversary context and in a form historically viewed as capable of judicial resolution." *Flast v. Cohen*, 392 U.S. 83, 101, 88 S.Ct. 1942, 1953 (1968). See also *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 90 S.Ct. 827 (1970); *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691 (1962).

Nor does the absence of a project proposal or interest in land impede the District Court's ability to grant effective relief. Initially, it should be noted that the "concept of standing focuses on the party seeking relief, rather than on the precise nature of the relief sought." *Jenkins v. McKeithen*, supra at 423, 89 S.Ct. at 1850. Moreover, even assuming that the nature of the relief is relevant to the inquiry here, it is manifest that the District Court could grant effective relief. The requested declaratory[3] and injunctive relief could remove the barriers to construction of multiracial, low and moderate income housing and restrain defendants from engaging in the types of actions which, thus far, have prevented the construction of such housing. Additionally, if plaintiffs sustain their allegations of racial discrimination, they will be entitled to relief which requires affirmative steps to cure the continuing effects of the past discrimination. See, e.g., *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267 (1971); *Louisiana v. United States*, 380 U.S. 145, 85 S.Ct. 817 (1965). Such relief could order defendants to devise a comprehensive plan to remedy the effects of their racially discriminatory practices and policies. See, e.g., *Gautreaux v. Chicago Housing Authority*, 503 F.2d 930 (7th Cir. 1974); *Hart v. Community School Board of Brooklyn*, 383 F.Supp. 699 (E.D.N.Y. 1974), appeal dismissed, 497 F.2d 1027 (2d Cir. 1974).

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[3]The District Court has a " 'duty to decide the appropriateness and the merits of the declaratory request irrespective of its conclusion as to the propriety of the issuance of the injunction.' " *Super Tire Engineering Company v. McCorkle*, 416 U.S. 115, 121, 94 S.Ct. 1694, 1698 (1974) (quoting *Zwickler v. Koota*, 389 U.S. 241, 254, 88 S.Ct. 391, 399 (1967).

Accordingly, it is submitted that plaintiffs Broadnax, Ortiz, Reyes and Sinkler have standing to seek judicial review of defendants' racially discriminatory and exclusionary practices and policies.

POINT II

Property owners of the City of Rochester who suffer from a decaying city environment and ever spiralling taxes as a result of defendants' racially exclusive zoning ordinance have standing to seek judicial review of the ordinance and its enforcement.

The test for determining whether plaintiffs Vinkey, Reichert, Warth, Harris and Ortiz have standing to sue the defendants is the same test that this Court applies in determining whether the other plaintiffs have standing — that is, whether they allege injury in fact and whether the interest "... sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 830 (1970); see also *Barlow v. Collins*, 397 U.S. 159, 90 S.Ct. 832 (1970); *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 93 S.Ct. 2405 (1973). These plaintiffs are not litigating merely because they happen to be taxpayers of the City of Rochester. Thus, defendants' analysis of the taxpayer standing cases is inapposite. See, e.g., *Doremus v. Board of Education*, 342 U.S. 429, 72 S.Ct. 394 (1952); *Frothingham v. Mellon*, 262 U.S. 447, 43 S.Ct. 597 (1923). (Respondents' Brief at 26-33).

Plaintiffs Vinkey, Reichert, Warth, Harris and Ortiz sue because the exclusionary and discriminatory acts of the defendants are directly affecting them and causing them economic injury. One such injury is the actual increase in the property taxes which these plaintiffs are forced to pay as a result

of defendants' policies and practices. These plaintiffs allege that their property taxes have increased dramatically over the years because defendants' refusal to permit construction of low and moderate income housing forces the City of Rochester to provide such housing, much of which is tax abated. (A. 5, 6) Penfield has no tax abated housing properties. (A. 471) While the defendants have recognized their obligation to assume their "fair share" of providing such housing, (A. 502) they have yet to do so.

The pocketbook injury to these plaintiffs, however, is only a part of the injury. As long as the defendants are allowed to continue their exclusionary and discriminatory practices, the concentration of low and moderate housing in the City of Rochester will continue to produce a "density crush"; law enforcement authorities are generally less able to cope with problems; the city environment will continue to decline (A. 483)[4]

The plaintiffs in this case, like the plaintiffs in *United States v. Students Challenging Regulatory Procedures*, supra at 690, 93 S.Ct. at 2417, are entitled to their day in court. Certainly the plaintiffs must prove their claims upon trial. However, the only question now is whether the plaintiffs have alleged injury. Plaintiffs submit that the economic and environmental injury which they are forced to endure is sufficient to insure that the issues are presented in an adversary context and in a form capable of judicial resolution. *Flast v. Cohen*, 392 U.S. 83, 101, 88 S.Ct. 1942, 1953 (1968).

[4]It is difficult to understand how defendants can assert (Respondents' Brief at 32) that plaintiffs have changed their position with respect to the standing of these plaintiffs. Plaintiffs have always asserted that they are property owners and taxpayers in describing their status.

POINT III

The organizational plaintiffs and their members suffer loss of associational rights and economic injury as a direct result of defendants' racially discriminatory acts and, therefore, have standing to seek judicial review of those acts.

When a defendant engages in a course of conduct which causes injury to an organization or its members, the organization may sue in its own right and on behalf of its injured members. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 93 S.Ct. 2405 (1973); *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361 (1972); *N.A.A.C.P. v. Button*, 371 U.S. 415, 83 S.Ct. 328 (1963); *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 78 S.Ct. 1163 (1958). An organization is its members, the members are the organization. Harm to organization members is harm to the organization and vice-versa. This court in the cases noted above has found standing for organizations and their members regardless of whether the emphasis has been placed on harm to the organization or harm to its members. Thus, there is no real basis in law for defendants' suggestion (Respondents' Brief at 34 and 35) that the standing of the organizational plaintiffs in this lawsuit is somehow imperfect because the organizations themselves do not make claim of violation of rights vital to their existence but must instead base any legal right to standing in this lawsuit on that which they can claim "derivatively" through their members.

1. *Metro Act of Rochester, Inc.*

Contrary to defendants' suggestion (Respondents' Brief at 35, 36) the interest and involvement of Metro Act[5] and its

[5]The fact that Metro Act undertakes other activities than housing programs does not, as defendants suggest, (Respondents' Brief at 35) render it any less able to challenge defendants' discrimination. The question is whether the acts of the defendants injure Metro Act and/or its members.

members in efforts to end exclusionary housing patterns in the Rochester area have been continual, vital and effective. (A. 180-195) Metro Act and its members formulated and submitted plans for the construction of low, moderate income housing in the City of Rochester; the City responded favorably to those suggestions. Metro Act and its members were instrumental in the formulation of the Housing Council in the Monroe County Area, Inc. Metro Act and its members have been instrumental in causing the undertaking of comprehensive studies of housing problems in the Rochester area and the formulation of planned solutions to those problems. Detailed and concrete proposals were made by Metro Act and its members to the Town of Penfield for the correction of its exclusionary zoning but to no avail.

By no fair reading of the record in this case can Metro Act be described as having merely an interest in housing problems.[6] Defendants seem to complain (Respondents' Brief at 38) that Metro Act should have made its Penfield resident member, Ann McNabb, a plaintiff. However, the very purpose of an organization or an association as a plaintiff is litigating on behalf of the organization and its members. When Metro Act is plaintiff, its 350 separate members need not be plaintiffs as well.

2. *Housing Council In the Monroe County Area, Inc.*

The Housing Council in the Monroe County Area, Inc. (Housing Council) has been thwarted in efforts to accomplish its purpose by the discriminatory acts of the defendants. Housing

[6]Nor is it fair for defendants to suggest (Respondents' Brief at 38) that Metro Act first raised associational right claims and standing of its Penfield members on appeal. The complaint and affidavits in opposition to the motion to dismiss were, of course, a part of the record before the District Court. In fact, there was submission of plaintiffs' papers to the District Court in this case prior to this Court's decision in *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 93 S.Ct. 364 (1972).

Council has, like Metro Act, been involved in analyzing the exclusionary housing patterns of Rochester communities, including the Town of Penfield, and formulating plans to solve those problems. (A. 170-176)

The membership of Housing Council has been directly damaged by the defendants' refusal to change its exclusionary zoning ordinance. The numerous minority members of Housing Council, like minority plaintiffs in this lawsuit, are being excluded from residing in Penfield. (A. 175) These persons suffer daily from the effects of confinement to a decaying inner city environment.

The experience of Penfield Better Homes is illustrative of the deep involvement of Housing Council members in efforts to increase the availability of mutiracial, low and moderate income housing in Penfield. (A. 849-859) Contrary to defendants' assertion (Respondents' Brief at 41), the Penfield Better Homes housing proposal was concrete and specific. A fifteen acre site in Penfield had been selected as well as a builder, general contractor, architect and housing consultant. Penfield Better Homes obtained a soil review, traffic survey and a legal opinion for the town to overcome any objections the town would have to the project. (A. 860 — 880) Notwithstanding, the defendants denied the re-zoning application of Penfield Better Homes because the proposed townhouse construction "... would constitute an inappropriate use of this land and would not be consonant with existing character of the neighborhood ..." (A. 881, 882)

Defendants suggest (Respondents' Brief at 42) that Penfield Better Homes might have challenged the denial of application in New York State courts. And indeed that might be true.[7] But it

[7]However, the excessive cost, as well as time necessary to litigate such question on a case by case basis would be most difficult for a non-profit group to sustain even if it could retain its land option long enough and, far more difficult than for the private builder who will rarely gamble on such economic loss.

does not follow that Penfield Better Homes as a member of an organization and along with other plaintiffs which have been injured by the discriminatory acts of the defendants cannot assert in federal court that these acts violate the Constitution and laws of the United States.

3. *Rochester Home Builders Association, Inc.*

The Rochester Home Builders Association, Inc. (Rochester Home Builders), a trade association broadly representative of its members engaged in activities designed to foster and promote the housing industry and adequate housing for all members of the community (A. 146), has been injured by the acts of the defendants' exclusion of multiracial, low and moderate income housing.[8] Likewise, Rochester Home Builders members who have constructed over 80% of the private housing in Penfield in the last fifteen years and who complain that the defendants have subjected them to the same discriminatory treatment as the other plaintiffs (A. 144 — 147) have standing to complain of the exclusionary zoning ordinance and its enforcement.[9]

Defendants refused to grant members of Rochester Home Builders variances, permits, etc. to enable construction of multiracial, low and moderate income housing. (A. 141, 142; 154 — 156) Additionally, defendants have even "... attempted to

[8]A suggestion by defendants (Respondents' Brief at 43) that Rochester Home Builders lacks the status to represent its members because it has not alleged previously appearing on their behalf is inappropriate. Rochester Home Builders has the requisite statutory authority, Section 202, New York Not-For-Profit Corporation Law. It has in fact previously appeared but its standing in this action is not dependent on past activity or the lack of it.

[9]Contrary to the assertion of defendants (Respondents' Brief at 43, footnote 17), the standing of Rochester Home Builders is sufficient to sustain its interest and position in this case even if all the other plaintiffs' cases were dismissed. Although not reached by the court below, the District Court's conclusion that it could not grant intervention because of the delay and prejudice to the adjudication of the rights of the original parties is clearly not sustained in the record.

coerce ..." (A. 158) members of Rochester Home Builders from bringing this lawsuit and have threatened members of Rochester Home Builders that if the lawsuit were brought Rochester Home Builders "... would be prevented from doing business in the Town of Penfield and/or would be given great difficulty in obtaining necessary approvals, cooperation and/or appropriate treatment by government officials of said town, which would thus prevent them from carrying out their ordinary and necessary business in due course in said town". (A. 159)

It is alleged that Rochester Home Builders have tried to construct multiracial, low and moderate income housing[10] in the Town of Penfield and have been prevented by the discriminatory acts of the defendants. There is no support whatsoever for defendants' assertion (Respondents' Brief at 43) that Rochester Home Builders do not allege that any of its members desire to construct or are prepared to construct multiracial, low and moderate income housing in Penfield.

The defendants further claim that the Rochester Home Builders have failed to plead "concrete specifics" (Respondents' Brief at 44). Again, in the present posture of the lawsuit, plaintiffs' allegations are accepted on their face. Plaintiffs allege that all efforts of builders to construct multiracial, low and moderate income housing have been frustrated by the defendants as part of their policy and practice to exclude minority residents. (A. 623 — 642)

At time of trial, proof will be presented of the specific acts of defendants' denying Rochester Home Builders permits, variances, etc. and thereby preventing construction of multiracial, low and moderate income housing and of Rochester

[10]Low and moderate income housing is defined as housing which sells for under $20,000 per unit and rents for under $175 per unit. Low and moderate income families are those having incomes between $5,500 and $11,000 per year. (A. 492, 493, 929, 930)

Home Builders' interest and willingness to proceed with such projects. However, if the defendants are allowed to continue in their course of conduct, it can hardly be expected that Rochester Home Builders will propose further projects knowing in advance they would have no opportunity of acceptance by the town.

CONCLUSION

Each plaintiff has standing to sue because each is injured in fact by defendants' racially discriminatory and exclusionary practices and policies. Accordingly, the judgment of the Second Circuit should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2024

ROBERT WARTH, ET AL., *Petitioners,*

v.

IRA SELDIN, ET AL.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF AMICUS CURIAE OF THE NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING Washington, D.C.

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BRIEF AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

With the consent of the parties, the National Committee Against Discrimination in Housing, Inc. (NCDH) submits this brief *amicus curiae* in support of the petitioners, urging reversal of the judgment of the Court of Appeals for the Second Circuit. That decision, rendered on April 18, 1974, is reported at 495 F.2d 1187. It affirmed an order of the district court dismissing the complaint on the pleadings without a full evidentiary hearing.

NCDH was founded in 1950 with the objectives of establishing and implementing programs to eliminate racial

segregation and discrimination in housing and to broaden housing opportunities for minority group members, especially those of lower income. Since its inception, NCDH has carried out affirmative programs of research and education in the area of equal housing opportunity.

NCDH has complemented its research and education efforts with a vigorous legal program aimed at securing equal housing opportunity guaranteed under state and federal law. It has initiated litigation and participated as *amicus curiae* in numerous cases involving challenges to discriminatory housing practices and exclusionary land use controls. Among the important recent cases initiated by NCDH are *Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970), and *SASSO* v. *City of Union City*, 424 F.2d 291 (9th Cir. 1970). Among the important recent cases in which NCDH has participated as *amicus curiae* are *Reitman* v. *Mulkey*, 387 U.S. 369 (1967), *Jones* v. *Mayer*, 392 U.S. 409 (1968), *Curtis* v. *Loether*, 415 U.S. 189 (1974), and *Kennedy Park Homes Ass'n* v. *City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971).

In the course of its work, NCDH has analyzed the impact of suburban zoning and other land use policies and practices on housing, job, and educational opportunities for lower income minorities in the nation's metropolitan areas. We have found that, in many instances, suburban municipalities have exercised their zoning and other land use powers in a manner to isolate themselves from the problems of the metropolitan areas of which they are a part and to exclude lower income minorities.

Consequently, the question whether lower income minorities have standing to challenge such discriminatory land use practices is of the highest importance. The resolution of this issue by the Court will bear significantly on the efforts of NCDH to assist lower income minorities

in securing their legally protected right to equal housing opportunity, and to reverse the accelerating racial and economic polarization in metropolitan areas.[1]

QUESTION PRESENTED

Whether lower income minority persons who seek to reside in a community have standing to challenge racially discriminatory land use practices by that municipality which block the construction of housing in which they can live.

ARGUMENT

Lower Income Minority Persons Have Standing To Challenge Racially Discriminatory Land Use Practices by a Municipality Which Prevent Them from Residing in that Community.

Introduction

The court of appeals affirmed the dismissal of the complaint solely on the ground that the plaintiffs lacked standing to maintain the action. In reciting the familiar two-pronged test of standing announced in *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150, 152-53 (1970), it held that the complaint in this case did not sufficiently allege "injury in fact." The court of appeals believed that the plaintiffs did not allege a "personal stake" in the outcome of the litigation to satisfy the standing requirement.

NCDH contends that the court of appeals, in denying these plaintiffs standing, misapplied some and ignored other decisions of this Court. We argue that when the allegations of the complaint are placed against a proper reading of the applicable precedents, plaintiffs' harm will be shown sufficiently for standing purposes. In light of

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[1] In Monroe County, New York, of which the defendant Town of Penfield is a part, more than 95 percent of the black population resides in the central city of Rochester, and barely .01 percent lives in Penfield. United States Bureau of the Census, *Census of Population:* 1970.

the concerns of NCDH set forth above, we focus our attention on the alleged injury to the lower income, minority plaintiffs.[2]

Since the lower courts dismissed the complaint at the pleading stage, before an evidentiary hearing was held, this Court is obliged to undertake the same limited inquiry. Consequently, the settled rules for construing complaints at this early stage of the proceeding are fully applicable.

> For the purposes of a motion to dismiss, the material allegations of the complaint are taken as admitted . . . . And, the complaint is to be liberally construed in favor of plaintiff. *Jenkins* v. *McKeithen*, 395 U.S. 411, 421 (1969).

Accord, *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974); *United States* v. *SCRAP*, 412 U.S. 669 (1973).

This Court has, at least since the inception of the Federal Rules of Civil Procedure, admonished strongly against dismissing complaints "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley* v. *Gibson*, 355 U.S. 41, 45-46 (1957).

1. The Plaintiffs Are Injured in Fact

Petitioners Broadnax, Reyes, and Sinkler are lower income minority residents of Rochester. These plaintiffs have been unable, because of their race and economic status, to locate housing in Penfield, a suburb of Rochester. They allege that the absence of dwellings they can afford is a

[2] While we argue primarily for the standing of the lower income minority plaintiffs, we maintain that the court of appeals erroneously applied this Court's decisions in denying standing to the organizational plaintiffs. "It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review." *Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972); *accord*, *NAACP* v. *Button*, 371 U.S. 415 (1963); *United States* v. *SCRAP*, 412 U.S. 669 (1973).

result of the defendants' unlawful conduct. The petitioners claim that the defendants, officials of Penfield, discriminate against them through maintenance and administration of their zoning and other land use policies and practices.

Notwithstanding the plaintiffs' allegations that the defendants' practices are unlawful both on their face and as applied, the court of appeals focused almost exclusively on the facial content of the zoning ordinance.[3] It largely ignored the plaintiffs' explicit allegations that the zoning law has been improperly administered. The lower court opinion initially noted, then ignored, the allegation of unlawful application of the ordinance. The plaintiffs claim that the defendants, on several occasions, refused to approve plans for the construction of low and moderate income housing these minority petitioners can afford.

The complaint alleged that the defendants have "administered the provisions of the said zoning ordinance by refusing to grant variances, building permits, and by use of special permit procedures and other devices so as to effect and propagate the exclusionary and discriminatory policy, plan and/or scheme." Complaint paragraph Sixteenth; see also paragraph Eighteenth. As the court of appeals expressly noted: "Appellants' complaint goes beyond the fact of the town's zoning laws and further alleges certain affirmative acts . . . ." 495 F.2d at 1189. As the court also noted, these affirmative acts involved blocking the construction of a number of proposals for multifamily housing in Penfield. These included at least one proposed project for what the court characterized as " 'low moderate income housing' " *ibid*, precisely the kind of

[3] The irony of the defendants' contention that these non-resident plaintiffs have no interest in Penfield's land use practices is that the zoning ordinance itself recognizes that concern. In the provisions for "planned unit development," the ordinance requires the builder to consider the needs of "existing and *potential* town residents at all economic levels." Penfield Zoning Ordinance, §29-1120.B.(1) (emphasis added).

honsing for which plaintiffs were potential residents. See Complaint paragraph Fifth; Complaint 1 paragraph Seventh. But in its discussion of the standing of the individual plaintiffs, the court ignored these "affirmative acts" and focused on the zoning law alone. 495 F.2d at 1191-93.

We contend that even under an analysis limited to the facial content of the ordinance, the plaintiffs allege injury in at least two respects. First, the ordinance severely restricts certain types of housing which would be in the price range these lower income minority persons can afford. For example, while the ordinance allows mobile home parks (but not mobile homes on individual lots) and multifamily dwelling units, it limits such housing to a fraction of the land available for residential construction. Less than one percent of all vacant land in Penfield, the plaintiffs allege, is zoned for this type of housing. Because of the absence of land for apartments and mobile homes, builders are unable to construct housing these plaintiffs can afford.

A second source of injury to these lower income minority plaintiffs, from the face of the ordinance, arises out of the provisions governing the construction of single-family detached housing. The plaintiffs allege that 98 percent of all the vacant land in Penfield is zoned in this manner. Contractors cannot build housing for these plaintiffs on that land, however, because the requirements imposed by the ordinance raise the cost beyond that which these plaintiffs can afford. By imposing requirements relating to such factors as large lot sizes, minimum floor space, and density, the ordinance precludes the construction of housing which these plaintiffs can purchase.

Moreover, the plaintiffs' claim is based not only on the maintenance of Penfield's zoning law, but, as the lower court noted, on its application to block specific proposals

for housing in which they could live. 495 F.2d at 1189. Once the nature of the defendants' conduct is fully disclosed by an examination of the complaint and accompanying affidavits,[4] the direct injury to the plaintiffs becomes clear. Their standing to challenge these unlawful actions follows, if the decisions of this Court are accorded their proper significance.

The two-pronged test of standing set forth in the *Camp* and *SCRAP* cases, *supra*, is surely met here. The interest plaintiffs seek to protect—the right to equal housing opportunity without discrimination—is clearly within the zone of interests protected by 42 U.S.C. 1981, 1982, and 1983, as well as the Fourteenth Amendment to the United States Constitution. The court of appeals apparently believed that the plaintiffs satisfied that requirement as it did not discuss the point.

The second part of the test—whether injury in fact is alleged—is also satisfied by the allegations in the complaint and the facts in the affidavits. The plaintiffs contend they have been harmed because the defendants' conduct has prevented the construction of housing they can afford. The injurious result has adversely affected the minority plaintiffs in several ways: denial of decent, safe, and sanitary

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[4] It is not clear whether the presence of plaintiffs' affidavits converts defendants' motion to dismiss into a motion for summary judgment under Rule 12(b), Fed.R.Civ.P. We believe it does not. See *Laird* v. *Tatum*, 408 U.S. 1, 2-3 (1972). But even if the case is considerd in the posture of a motion for summary judgment, the district court is still obligated to treat the well-pleaded allegations as true (in the absence of contradictory affidavits). *Cf. England* v. *Louisiana State Board of Medical Examiners*, 263 F.2d 661, 674 (5th Cir.), *cert. denied*, 359 U.S. 1010 (1959). Of course, plaintiffs' complaint should be evaluated factually as supplemented by their affidavits. *Ellis* v. *Carter*, 291 F.2d 270, 275 (9th Cir. 1961).

housing;[5] denial of employment opportunities; denial of quality education for their children; and denial of the right to choose where to live. Each of these deleterious effects, standing alone, would suffice to meet the "injury in fact" test of standing. In *United States* v. *SCRAP, supra* at 688, where the Supreme Court sustained plaintiffs' standing, the injury was "far less direct and perceptible."

In *United States* v. *SCRAP, supra*, an organization composed of law student-environmentalists sued to restrain the Interstate Commerce Commission from raising railroad freight rates. They alleged that the increase in charges would decrease the use of the railroads for shipping discarded materials for recycling. This, in turn, would cause manufacturers to produce more non-recyclable commodities. The result would have an adverse impact on the environment, the plaintiffs contended, because more natural resources would be used and more litter would be strewn in public places.

This Court held that, so long as the plaintiffs had alleged a "specific and perceptible harm," they had standing to challenge the rate increase. It made no difference that the harm generated by the rate hike traveled an "atten-

[5] Plaintiff Broadnax, for example, described the conditions under which she and her family are forced to live in the inner city of Rochester: "The wiring in the house is so old and defective that there is some electrical short in the apartment at least every two weeks which requires our resetting fuses. The house foundation is now crumbling very badly. Since the foundation has started crumbling, there have been mice and rats coming into the house. The mice and rat infestation is now so bad that they come through the heating vents into the rooms of the apartment itself. I have already caught two mice in the children's bed. To have rats and mice infesting the house causes great anxiety among the children. One way that I try to reduce the danger of my children getting bitten is to leave the light on in the bedroom all night. The children are now afraid to go to sleep unless there is a light on in the room." Broadnax Affidavit, paragraph 9.

uated line of causation to the eventual injury." *Id.* at 688. The important point was that the plaintiffs had alleged "injury in fact," and were prepared to prove it. In the opinion below, the court of appeals never referred to the *SCRAP* case, an omission which underscores its erroneous conclusion.

In *Barlow* v. *Collins*, 397 U.S. 159 (1970), tenant farmers sued to enjoin a Department of Agriculture regulation which allowed federal crop assistance subsidies to be assigned (prior to payment to the tenant farmer) to a landlord for rent. The tenant farmers argued that the regulation would cause them injury in fact in the following way: If future federal payments could be assigned for rent, landlords would require that it be done as a condition to tilling their soil.

Thus, the tenant farmers, in the pre-harvest period, would be without any cash to purchase necessities, such as food and clothing. They would then have to go to the landlord for these items, or for credit to buy such goods. This process would make the tenant farmers totally dependent on the landlord, and thus, they would lose whatever economic independence they had before the promulgation of the regulation.

The line of reasoning from the alleged illegal action to the ultimate injury to the plaintiffs in *Barlow* follows the same sinuous yet deliberate course as in *SCRAP*. In each of these cases, the harm was perceptible but not direct, cognizable but not obvious. But neither directness nor magnitude has been required under the decisions of this Court.

In *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), white and black residents of a segregated apartment building sued to enjoin racial discrimination practiced by the owner. They alleged that the management's policy of excluding minorities adversely affected

their opportunities to meet and associate with members of minority groups. This injury, they asserted, was sufficient to confer standing on them to attack the defendants' racially exclusionary conduct. Again the injury to the plaintiffs was several steps removed from the allegedly illegal practices. Nonetheless, this Court sustained the standing of the residents to maintain the action.

Although the challenge in the instant case is not to private discrimination under 42 U.S.C. 3610, as in *Trafficante,* but rather to governmental discrimination under 42 U.S.C. 1981, 1982, and 1983, the applicable criteria for determining standing are the same. See *United States* v. *SCRAP, supra* at 689 n.14. Where 42 U.S.C. 3610(a) uses the phrase "any person who claims to have been injured," 42 U.S.C. 1983, for example, uses the words "the party injured." This phrase in Section 1983 should, for standing purposes, be construed as broadly as the nearly identical language in Section 3610 was construed in *Trafficante.* Both statutes are employed by injured plaintiffs in their roles as "private attorneys general." *Trafficante, supra* at 211. Thus, here, as in *Trafficante, Barlow,* and *SCRAP,* the issue is one of statutory, not constitutional standing.[6]

In the present appeal, the alleged injury to the plaintiffs caused by defendants' maintenance of their zoning scheme is more substantial and far more direct than that found sufficient in *SCRAP, Barlow,* and *Trafficante.* Pe-

[6] It is noted that, while no claim is made here under the Federal Fair Housing Act, as in *Trafficante,* this Court is authorized to cure "[d]efective allegations of jurisdiction," 28 U.S.C. 1653; *cf. Willingham* v. *Morgan,* 395 U.S. 402, 407 n.3 (1969), if the Court believes the plaintiffs do not have standing under 42 U.S.C. 1981, 1982, and 1983. Since standing is jurisdictional, this Court may correct the inadvertently omitted reference to 42 U.S.C. 3601 *et seq.,* or it may vacate the judgment and remand the case so that the plaintiffs may seek leave to amend the complaint. Rule 15, Fed.R.Civ.P.; *Sierra Club* v. *Morton,* 405 U.S. 727, 735 n.8 (1972); see *Spomer* v. *Littleton,* 414 U.S. 415 (1974).

titioners Broadnax, Sinkler, and Reyes are lower income minority persons who seek decent housing and the decent living environment that Penfield affords. As the court of appeals correctly pointed out, they have no interest in land within Penfield. 495 F.2d at 1191. But that is the essence of their complaint—that the defendants' zoning scheme prevents them from acquiring an interest in land, either by purchase or lease, by excluding housing in which they can live. Thus even under an analysis limited to the impact of the zoning law alone, the line of causation between the defendants' conduct and the injury to the plaintiffs is clear and direct, not "attenuated" as it was in *SCRAP* (where this Court nonetheless upheld plaintiffs' standing).

Further, in the instant case, the injury to plaintiffs is caused not merely by the maintenance of zoning laws, but, as the lower court expressly recognized in its statement of the facts, by "affirmative acts" blocking proposals for the construction of multifamily housing in which they were potential residents. 495 F.2d at 1189. The court contended, however: "In no case do appellants allege any involvement in these proposals." *Ibid.* It is difficult to conceive how these plaintiffs—lower income minority persons—could have alleged any closer involvement than they already have. Their involvement, according to the complaint, lies in the fact that they are potential residents of low and moderate income housing, and the injury defendants cause them lies in the exclusion of such housing from Penfield by means, not only of their maintenance of zoning laws, but also by "affirmative acts" blocking specific projects.

As a direct result of defendants' conduct, these plaintiffs are unable to acquire land, to lease an apartment, or to purchase a home within the municipal borders, conditions which the court of appeals suggested were essential elements for standing. 495 F.2d at 1191. If the defendants explicitly prohibited minorities from living in their town, non-resident blacks or hispanics would surely have stand-

ing to challenge that ordinance. See *Loving* v. *Virginia*, 388 U.S. 1 (1967); *cf. Buchanan* v. *Warley*, 245 U.S. 60 (1917). Here, the defendants accomplish the same result somewhat more subtly than by use of express language imposing racial and ethnic disabilities. Federal proscriptions against exclusionary devices nullify "sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson*, 307 U.S. 268, 275 (1939).

It would be a harsh rule of standing which required, as the court of appeals suggests, that these plaintiffs must first live in Penfield before they can challenge land use practices which exclude them. 495 F.2d at 1191. It is defendants' alleged discriminatory conduct, not the plaintiffs' choice, which prevents them from residing in the community. If physical presence in a municipality were an essential element of standing, then the ability of injured non-residents to challenge unlawful land use practices would be committed to the sole discretion of the offending party. A community which successfully excludes all lower income minorities from its borders could effectively insulate itself from legal attack. In short, the most egregious violations would be the least likely to be remedied.

Just last May, this Court confronted a similar contention and rejected it. In *Allee* v. *Medrano*, 94 S. Ct. 2191 (1974), union organizers brought suit to enjoin the alleged harassment of their activities by public officials. The defendants argued that the case was not justiciable (moot) because the plaintiffs had ceased their organizational efforts. This Court rejected that argument because the plaintiffs "abandoned their efforts as a result of the very harassment they sought to restrain by this suit." *Id.* at 2197. That is precisely the point here. Plaintiffs in the instant case are unable to live in Penfield because of defendants' discriminatory conduct which plaintiffs seek to restrain by this suit.

2. Plaintiffs Have Standing Independent of Developers and Landowners.

The court of appeals also indicated that the plaintiffs might have standing if they joined with landowners or contractors in challenging defendants' practices. 495 F.2d 1191-92.[7] In other words, according to the lower court, even if the defendants' alleged discriminatory conduct has directly prevented the construction of housing, these low and moderate income minority plaintiffs cannot challenge municipal action which effectively excludes them unless the developer or the property owner is also a plaintiff. This "piggy-back" theory has no basis in precedent or reason.

In *Roe* v. *Wade*, 410 U.S. 113 (1973), and *Doe* v. *Bolton*, 410 U.S. 179 (1973), this Court held that women, who had once been pregnant, could challenge abortion statutes which prevented them at the time from terminating their pregnancies. The anti-abortion laws in issue did not impose any penalty upon a woman who underwent an abortion. And clearly a woman needs the aid of others (physicians, nurses, etc.) to terminate a pregnancy.

Nonetheless, this Court held that such women have standing, and did not require attending physicians or nurses to join with them in challenging a statute which criminalized only the conduct of the attendants. Their position with respect to the abortion statute is precisely the same as the minority plaintiffs here who seek housing in Penfield. In both cases, the plaintiffs need the assistance of others in order to secure their rights. Just as the women in *Wade* and *Bolton* needed the assistance of members of the medical profession, so the plaintiffs here need the as-

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[7] Citing *Park View Heights Corp.* v. *City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972), and *Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970), the court said: "In both cases, the court permitted potential residents of the proposed projects to join [with the developers] as plaintiffs." 495 F.2d at 1192.

sistance of builders or landowners to secure decent housing in Penfield. The women in *Wade* and *Bolton* were accorded standing; so should these plaintiffs here.

Similarly, in *James* v. *Valtierra*, 402 U.S. 137 (1971), low income persons challenged, on its face, a California referendum provision which they claimed prevented the construction of housing they could afford. At the time suit was instituted, no project was under consideration nor were any landowners plaintiffs in the litigation.[8] In entertaining the suit, this Court was not disturbed because a builder did not join with the low income plaintiffs in challenging the referendum procedure which purportedly excluded them.[9] Nor did the Court reject the suit because of the absence of a viable project whose construction was adversely affected.[10]

Granting such independent standing to lower income minorities also has sound legal support in numerous decisions by lower federal courts. They have consistently

[8] Although a potential housing facilitator, the public housing authority, was a nominal defendant in *Valtierra*, this Court should not decide the question of standing "on the basis of the identity of the parties named as defendants in the complaint." *Laird* v. *Tatum*, 408 U.S. 1, 10 n.6 (1972).

[9] Although the standing of the plaintiffs was not directly at issue in *Valtierra*, the decision has precedential value. Standing is a jurisdictional concept, and federal courts have an affirmative obligation in each case to insure that their jurisdiction is properly invoked. "[I]t is the duty of this court to see to it that the jurisdiction [of lower federal courts], which is defined and limited by statute, is not exceeded." *Louisville & Nashville R.R. Co.* v. *Mottley*, 211 U.S. 149 (1908); *accord*, *City of Kenosha* v. *Bruno*, 412 U.S. 507 (1973). Thus a precedent used for jurisdictional purposes has greater weight than if it were employed for other reasons, even though the precise jurisdictional issue was not expressly discussed by the Court.

[10] It is true that, in *Valtierra*, the referendum mechanism had been used earlier to block low income housing projects. But that fact is present here also as these plaintiffs allege that Penfield has turned down several such projects in the past.

entertained suits in which lower income minorities who are potential residents of a community or a proposed project have challenged municipal land use practices which prevent, impede, or interfere with the construction of housing they can afford. In *Park View Heights Corp.* v. *City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972) and *Sisters of Providence* v. *City of Evanston*, 335 F.Supp. 396 (N.D. Ill. 1971), several sets of plaintiffs, including lower income minority potential residents of subsidized housing, challenged allegedly discriminatory land use practices. The courts, after examining each class of plaintiffs, held that the case was justiciable as to each, emphasizing the injury to the lower income minorities.[11]

In *Banks* v. *Perk*, 341 F.Supp. 1175 (N.D. Ohio 1972) *aff'd in relevant part*, 473 F.2d 910 (6th Cir. 1973), lower income minority prospective residents were the only plaintiffs in the case. The builder whose project was blocked by municipal conduct was conspicuous by his absence. Nonetheless, the individual minority plaintiffs had standing to challenge the discriminatory conduct.

And in the recent case of *Cornelius* v. *City of Parma*, 374 F. Supp. 730 (N.D. Ohio 1974), *vacated and remanded*, — F.2d — No. 74-1401 (6th Cir. Oct. 22, 1974), where, again, the builder was not a plaintiff, lower income

[11] See also *United Farmworkers* v. *City of Delray Beach*, 493 F.2d 779 (5th Cir. 1974); *Morales* v. *Haines*, 486 F.2d 880 (7th Cir. 1973); *King* v. *New Rochelle Municipal Housing Authority*, 442 F.2d 646 (2d Cir. 1971), *cert. denied*, 404 U.S. 863 (1971); *Dailey* v. *City of Lawton*, 425 F.2d 1037 (10th Cir. 1970); *Kennedy Park Homes Ass'n* v. *City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971); *Cole* v. *Housing Authority*, 435 F.2d 807 (1st Cir. 1970); *Ranjel* v. *City of Lansing*, 417 F.2d 321 (6th Cir. 1969), *cert. denied*, 397 U.S. 980 (1970); *Crow* v. *Brown*, 332 F. Supp. 382 (N.D. Ga. 1971), *aff'd* 457 F.2d 788 (5th Cir. 1972); *Gautreaux* v. *Chicago Housing Authority*, 265 F. Supp. 582 (N.D. Ill. 1967).

minority non-residents sued to enjoin allegedly discriminatory land use practices, both on their face and as applied, of a Cleveland, Ohio suburban community. The district court dismissed the complaint on grounds, *inter alia,* that the builder was not itself contesting Parma's conduct. 374 F. Supp. at 736. The court of appeals vacated the judgment because "the complaint appears to state a cause of action alleging racial discrimination . . ." and remanded the case for trial.[12] This, we contend, is what the court of appeals in the instant case should have done and what this Court should do to correct the lower court's basic error.

Granting independent standing to lower income minorities to attack municipal land use practices which exclude them also makes eminently good practical sense. After all, they are "the real losers" and "the true parties in interest" when governmental action, as in this case, prevents their obtaining better housing. *CMHA* v. *City of Cleveland,* 342 F. Supp. 250, 256 (N.D. Ohio 1972), *aff'd sub nom. CMHA* v. *Harmody,* 474 F.2d 1102 (6th Cir. 1973). If future tenants or residents could only establish the justiciability of their claim derivately through housing sponsors or landowners, a great deal of discriminatory behavior by government would forever go unchallenged. Contractors, for example, are reluctant to bear the financial burdens and incur local wrath by challenging discriminatory municipal action.[13] And local property owners may well, after a controversy has erupted over the construction of lower income minority housing on their land, be relieved to see the project stymied by municipal action.

[12] The full text of the court of appeals opinion is as follows:

> "On consideration of the briefs and records and oral arguments in the above-styled appeal; and
>
> Noting that the complaint appears to state a cause of action alleging racial discrimination in the exclusion of black citizens from equal access to housing, jobs and educational opportunities in the City of Parma, Ohio, which requires a factual hearing,
>
> The judgment of the District Court is vacated and the case is remanded for trial."

3. An Effective Remedy Is Available.

The court of appeals also denied standing because, in its view, effective relief could not be provided even if the plaintiffs prevailed.[14] "Indeed, appellants' prayer for relief demonstrates their lack of personal stake in the outcome and their lack of standing." 495 F.2d at 1192. The lower court apparently believed that ordering the relief requested would not produce the housing needed by the plaintiffs.

> Granting this relief would not clear roadblocks to currently planned housing which appellants hope to occupy. It would not benefit appellants in any way in the foreseeable future. *Id.* at 1192-93.

[13] As one commentator pointed out regarding the reluctance of builders to institute litigation challenging such misconduct: "[I]s there any reason to suspect that builders familiar with the experience of Joseph Girsh will imitate his example of eight years of litigation, three trips to the Supreme Court of Pennsylvania, three cases pending, all as a means of constructing apartment houses?" Moskowitz, *Standing of Future Residents in Exclusionary Zoning Cases,* 6 Akron L. Rev. 189, 213 (1973). For case decision, see *In re Girsh,* 437 Pa. 237, 263 A.2d 395 (1970).

[14] There is serious doubt whether the question of relief is properly to be considered in evaluating a plaintiff's standing. "[T]he concept of standing focuses on the *party* seeking relief, rather than on the precise nature of the *relief* sought." *Jenkins* v. *McKeithen, supra* at 423 (1969) (emphasis added). In examining the nature of the relief sought, the court of appeals might have confused the standing issue with other aspects of justiciability, such as "ripeness" or "political question," where the relief is properly a part of the inquiry. See *Laird* v. *Tatum,* 408 U.S. 1 (1972); *United States* v. *Richardson,* 94 S. Ct. 2940 (1974).

First, it should go without saying that the scope of relief is properly a matter left to the trial judge after a full evidentiary hearing on the merits of the plaintiffs' claim. After such a trial, a judge might well deny all relief, grant only part of the plaintiffs' request, or enter an order different from any judgment proposed by the parties. This is particularly true with respect to equitable relief, where the trial court must fashion his order in light of a complete factual record. Granting relief, like dismissing a complaint, should only be undertaken after a full and fair evidentiary hearing has been conducted. *Jenkins* v. *McKeithen, supra; see Public Affairs Associates* v. *Rickover,* 369 U.S. 111 (1962); *Scheuer* v. *Rhodes, supra.*

Second, it is important to stress that plaintiffs in this case seek not only declaratory, but also injunctive relief. We contend that both forms of remedy would remove "roadblocks" that prevent the construction of dwellings the plaintiffs could afford. A declaratory judgment alone would eliminate obstacles which, according to plaintiffs' factual allegations, are major barriers to building subsidized housing for lower income minorities. Moreover, the record shows that builders have sought in the past, and indeed currently seek, to construct housing for lower income minorities, only to be stifled by the defendants' actions. Properly tailored declaratory relief might well result in this housing getting built.

Third, and most important, injunctive relief could directly produce the needed housing. If the plaintiff-petitioners establish through an evidentiary hearing that the defendants have engaged in racial discrimination, they will be entitled to a decree which requires the defendants to take affirmative action to correct the effects of their past discrimination. *E.g., Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971); *Green* v. *County School Board,* 391 U.S. 430 (1968); *Louisiana* v. *United States,* 380 U.S. 145 (1965). Such a decree might well require the defendants to develop and implement an affirmative program which would actively encourage builders and sponsors of subsidized housing to construct dwellings in Penfield and to take other steps to assure that housing is provided for the plaintiffs and the class they represent. See *Garrett* v. *City of Hamtramck,* 335 F. Supp. 16 (E.D. Mich. 1971), *supplemental order,* 357 F. Supp. 925 (1973).

4. This Court's Recent Decisions Denying Standing Are Inapplicable.

This Court's recent decisions denying standing do not lead to a different conclusion. See *Schlesinger* v. *Reservists Committee to Stop the War,* 94 S. Ct. 2925 (1974); *United States* v. *Richardson,* 94 S. Ct. 2940 (1974); *O'Shea* v. *Littleton,* 414 U.S. 488 (1974); *Linda R. S.* v. *Richard D.,* 410 U.S. 614 (1973); *Laird* v. *Tatum,* 408 U.S. 1 (1972); *Sierra Club* v. *Morton,* 405 U.S. 727 (1972).[15] In each of these cases, the plaintiffs failed to allege that they were "injured in fact" by the defendants' purportedly unlawful conduct. The substantial harm inflicted upon these plaintiffs by the defendants' actions is a far cry, for example, from the minimal, subjective, and speculative injury alleged in *Laird* v. *Tatum, supra.*

Nor are we here concerned with vague and non-particularized challenges to local systems of criminal justice which would result in "an ongoing federal audit of state criminal proceedings." *O'Shea* v. *Littleton, supra* at 500.

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[15] Some of these cases, to be sure, may more properly be classified as dealing with aspects of justiciability other than standing. The plaintiffs in *United States* v. *Richardson, supra,* appeared to be seeking to undertake responsibilities which the Constitution commits solely to Congress. And in *Linda R.S.* v. *Richard D. supra,* the plaintiff sought an order directing prosecutorial authorities to exercise their power in a specified way, a matter historically committed to their sole discretion.

These "generalized grievances about the conduct of government," *Flast* v. *Cohen*, 392 U.S. 83, 106 (1968), are clearly inadequate bases upon which standing may be predicated. See also *Sierra Club* v. *Morton*, *supra*. Such judicial incursions would raise serious questions under the separation of powers doctrine and might well "create a remarkably illogical system of judicial supervision of the coordinate branches of the Federal Government." *United States* v. *Richardson*, *supra* at 2952 (concurring opinion of Powell, J.). "[I]njury in fact" is what is needed, *Data Processing* v. *Camp*, *supra* at 152, not "injury in the abstract." *Schlesinger* v. *Reservists Committee*, *supra* at 2930.

In sharp contrast, the present plaintiffs allege specific injury "in a form traditionally capable of judicial resolution." *Id.* at 2932. They claim racial and economic discrimination against municipal defendants under statutes expressly designed to remedy official misconduct of this nature. *E.g.*, 42 U.S.C. 1983; *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

> The irreplaceable value of the [judicial] power . . . lies in the protection it has afforded the constitional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action. *United States* v. *Richardson, supra* at 2954.

The case at bar is precisely of that order: a challenge by representatives of "minority groups against . . . discriminatory government action." These plaintiffs allege they have been injured in fact by the policies and practices of the defendants. That allegation of harm to their right to equal housing opportunity is sufficient to give them standing. They should be accorded an evidentiary hearing so that the full scope and serious nature of their claims can be presented.

CONCLUSION

For the reasons explicated in the foregoing submission, NCDH respectfully urges this Court to reverse the judgment below, and remand the case for a trial on the merits.

Respectfully submitted,

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Certificate of Service

I, Martin E. Sloan, a member of this Court, hereby certify, pursuant to Rule 33 of this Court, that the foregoing Brief Amicus Curiae has been served on counsel by placing copies of it in the United States mail, air mail, postage prepaid, addressed as follows:

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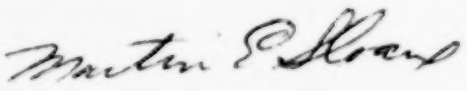

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2024

ROBERT WARTH, *et al.*,

Petitioners,

vs.

IRA SELDIN, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., AS AMICUS CURIAE

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BRIEF FOR THE N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., AS AMICUS CURIAE

Interest of Amicus Curiae*

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., is a non-profit corporation, incorporated under the laws of the State of New York in 1939. It was formed to assist Negroes to secure their constitutional rights by the prosecution of lawsuits. Its charter declares that its purposes include rendering legal aid gratuitously to black persons suffering injustice by reason of race who are unable, on account of poverty, to employ legal counsel on

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* Letters of consent from counsel to the filing of this brief for the petitioners and the respondents have been filed with the Clerk of the Court.

their own behalf. The charter was approved by a New York court, authorizing the organization to serve as a legal aid society. The N.A.A.C.P. Legal Defense and Educational Fund, Inc. is independent of other organizations and is supported by contributions from the public. For many years its attorneys have represented parties in this Court and the lower courts, and it has participated as *amicus curiae* in this Court and other courts, in cases involving many facets of the law.

The Legal Defense Fund receives many requests for assistance in the enforcement of fair housing laws, and participates in many cases in both federal and state forums to advance the national policy of "fair housing throughout the United States," 42 U.S.C. § 3601. Our experience indicates that discrimination in housing transactions necessarily causes injury to a wide circle of persons, including potential renters or purchasers, other residents of the building or neighborhood, builders, and owners. Adequate enforcement of fair housing requires that a commensurately broad range of persons and organizations be entitled to commence administrative and judicial proceedings. The Legal Defense Fund is therefore interested that requirements in fair housing cases not be more onerous than in other areas of law, lest victims of racial exclusionary zoning and other discriminatory housing practices be deprived of access to the judicial forum. Moreover, in our experience, fair housing cases can only be successfully litigated with advance preparation and the ability to devote the time, effort and expense necessary to prosecute complaints. Often "the only effective adversary", *Barrows* v. *Jackson,* 346 U.S. 249, 259 (1953), with sufficient resources and independence to challenge exclusionary zoning may be a membership association suing in behalf of injured members.

I.

The Denial of Standing to Challenge Exclusionary Zoning to Excluded Minorities Would Frustrate Achievement of Fair Housing Throughout the United States.

As this Court has said, the Constitution "nullifies sophisticated as well as simple minded modes of discrimination." *Lane* v. *Wilson,* 307 U.S. 269, 275 (1939).[1] At issue in this case is whether a town can escape the scrutiny of a federal court that would result if it enacted an ordinance that explicitly excluded blacks and other minorities,[2] by enacting and administering a zoning scheme racially neutral on its face that nevertheless had the same purpose and effect.[3] The Court of Appeals in this case, by erecting rules of standing more stringent than those that govern in other areas of the law, has effectively insulated the Town of Penfield from a challenge to its policies.

The Second Circuit held, in essence, that poor black and other minority persons who allege that they are prevented by the policies of the defendants from renting or purchasing housing cannot maintain this action; rather, their only apparent remedy is to wait and hope that other persons, specifically potential home-builders, will bring suit. Completely overlooked by the Court below is the fact that the interests and goals of a construction firm may be quite different from those of a potential black renter or purchaser. Also overlooked is the fact that in another case where a home-builder was the sole plaintiff there might be a question as to his standing in an action seeking to overturn a decision not to grant him a permit, to rely solely

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[1] See also, *Smith* v. *Texas,* 311 U.S. 128, 132 (1940).

[2] *Buchanan* v. *Warley,* 245 U.S. 60 (1917).

[3] See, *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886).

on the ground that the reason for the denial was to deprive third parties, *i.e.*, blacks and minorities, of their constitutional rights. *Compare, Moose Lodge* v. *Irvis*, 407 U.S. 163 (1972), *with, Eisenstadt* v. *Baird*, 405 U.S. 438 (1972) and *Barrows* v. *Jackson*, 346 U.S. 249 (1953). Thus, the net result of the decision might be that no one could challenge policies that clearly violate the Constitution, a result that this Court has often refused to sanction. See, *e.g., Roe* v. *Wade*, 410 U.S. 113, 125 (1972).

Amicus urges that the decision of the court below, therefore, is inconsistent with the goal of enforcing the national policy of "fair housing throughout the United States," 42 U.S.C. § 3601,[4] by making it impossible for those ultimately injured by exclusionary zoning policies to challenge them. The discriminatory impact of racial zoning has been recognized at least since *Buchanan* v. *Warley*, 245 U.S. 60 (1917). See also, *Harmon* v. *Tyler*, 273 U.S. 668 (1927); *Richmond* v. *Deans*, 281 U.S. 704 (1930); *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 6 (1974). Notwithstanding applicable Reconstruction amendments and laws, and long-standing judicial precedent, exclusionary zoning practices such as lot size, restrictions on multi-family structures, density limitations, and discriminatory grant of variances persist as barriers to racial integration of metropolitan areas across the nation. Indeed, the United States Commission on Civil Rights has recently documented that exclusionary zoning by local authorities is a principal factor in maintaining dual housing markets in metropolitan areas

[4] The Housing and Community Development Act of 1974, Pub. L. No. 93-383, also affirms as an aim, "the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the neutralization of deteriorating or deteriorated neighborhoods to attract persons of higher income."

in which the black and the poor are restricted to decaying central cities surrounded by closed white, affluent suburban communities. *Equal Opportunity in Suburbia*, 29-35 (July 1974).[5]

Racial zoning is a particularly pernicious form of housing discrimination in that its effect is wholesale exclusion.

> This is not a case as simple as the one where a man with a bicycle or a car or a stock certificate or even a log cabin asserts the right to sell to whomsoever he please, excluding all others whether they be Negro, Chinese, Japanese, Russians, Catholics, Baptist, or those with blue eyes. We deal here with a problem in the realm of zoning . . . whereby a neighborhood is kept "white" or "Caucasian" as the dominant interests desire. *Reitman* v. *Mulkey*, 387 U.S. 369, 381 (1967) (Justice Douglas concurring).

Exclusionary zoning can also have the effect of facilitating discrimination in the provision of public schools, see, *e.g., Milliken* v. *Bradley*, —— U.S. ——, 41 L.Ed. 2d 1069 (1974), municipal services, see *e.g., Hawkins* v. *Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971), *affirmed en banc*, 461 F.2d 1171 (5th Cir. 1972), and in the exercise of other civil rights, see, *e.g., Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), by efficiently creating racially distinct neighborhoods and communities. It would be anomalous, therefore, if those persons with the greatest interest in the eradication of exclusionary policies cannot challenge them because of artificially strict standing requirements.

[5] In the Rochester metropolitan area, for instance, the black population in 1970 was 49,647 in Rochester and 2,571, in suburban towns, as compared to total population figures of 296,233 in Rochester and 415,684 in the suburbs. The black population of suburban Penfield is 60 out of a total population of 23,782. Appendix on Appeal 228-29. [hereinafter "Appeal App."]

II.

Individual Black and Spanish-Surnamed Plaintiffs, Housing Council in the Monroe County Area, and Rochester Home Builders Association Have Standing to Challenge the Penfield Zoning Ordinance.

The issue in this case is whether *any* of the plaintiffs or the intervenor has made allegations adequate to confer standing to challenge the Penfield zoning ordinance as enacted and administered.[6] In affirming the motion to dismiss, the Second Circuit disregraded express allegations and averments in the record of "threatened or actual injury resulting from the putatively illegal action," *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 617 (1973), that establish "a logical nexus between the status asserted and the claim sought to be adjudicated," *Flast* v. *Cohen*, 392 U.S. 83, 102 (1968). The rule is that, "federal plaintiffs must *allege* some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." (emphasis added) *Linda R.S.* v. *Richard D., supra*, 410 U.S. at 617.

The Second Circuit, however, misconstrued this standard and premised dismissal on the judgment that none of the individuals or associations "has suffered from any of the specific, overt acts alleged," *i.e.* that the allegations of injury were in fact untrue. In so deciding, the Court of Appeals failed to make the distinction explicitly recognized by this Court in *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972) and in *United States* v. *SCRAP*, 412 U.S. 669 (1974), between the allegations of the complaint and what may be proved in the trial on the merits.[7]

[6] Because standing is clear as to certain individuals and associations, this *amicus* brief will not discuss the standing of all of them. See, *Doe* v. *Bolton*, 410 U.S. 179, 189 (1973); *California Bankers Assn.* v. *Shultz*, 416 U.S. 21, 44-45 (1974).

The complaint specifically alleges that the black and Spanish-surnamed class action plaintiffs are deprived of fair housing opportunities in Penfield on account of race and poverty by the operation of the zoning ordinance. Looking at the allegations as a whole (rather than by each plaintiff separately, as did the court below), the minority plaintiffs seek to show that: (1) the exclusionary zoning scheme was adopted and administered to exclude minorities; (2) it in fact has succeeded in its purpose; (3) as part of this scheme permit requests for low-income multiple housing have been denied; (4) the named plaintiffs are black, Spanish-surnamed, low-income persons who wish to live in the town; and (5) they have been unable to do so because of the success of the exclusionary zoning scheme.[8] If plaintiffs prevail on the merits, the black

[7] "We deal here simply with the pleadings in which the appellees alleged a specific and perceptible harm that distinguished them from other citizens who had not used the natural resources that were claimed to be affected. If, as the railroads now assert, these allegations were in fact untrue, then the appellants should have moved for summary judgment on the standing issue and demonstrated to the District Court that the allegations were sham and raised no genuine issue of fact. We cannot say on these pleadings that the appellees could not prove their allegations which, if proved, would place them squarely among those persons injured in fact by the Commission's action, and entitled under the clear import of Sierra Club to seek review." *United States* v. *SCRAP*, 412 U.S. at 689-90.

[8] The complaint states:

> FOURTEENTH: That the statute as enacted and/or administered by the defendants, has as its purpose and in fact, effects and propagates exclusionary zoning in said Town with respect to excluding moderate and low income multiple housing and further tends to exclude low income and moderate income and non-white residency in said Town and thereby deprives persons and has deprived persons including the plaintiffs Harris, Ortiz, Broadnax, Reyes and Sinkler of the

and Spanish-surnamed plaintiffs will personally benefit by achieving the same right to rent or purchase property in Penfield presently possessed by white persons, but denied the class of racial minorities by the present ordinance. See *James* v. *Valtierra*, 402 U.S. 137 (1971). Thus, here the individual minority-group plaintiffs have alleged a direct relationship between the correction of the injury suffered (exclusion from the town), and the relief sought (ending of the scheme of evclusionary zoning).[9]

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same right to inherit, purchase, lease, sell and/or convey real property and to make and enforce contracts and to the full and equal benefit of all laws and proceedings for the security of persons and property as are enjoyed by persons presently living in said Town. Appeal App. at 9.

Similar allegations are made in paragraphs Sixteenth, Appeal App. at 9-10; Seventeenth, Appeal App. at 10-11; Eighteenth, Appeal App. at 11-12; Nineteenth, Appeal App. at 12-13; and Twentieth, Appeal App. at 13-14. More particularly, the complaint alleges that Mr. Ortiz, a Puerto Rican, "is denied certain rights by virtue of his race." and that Mr. Ortiz "is employed in the Town of Penfield, New York, but has been excluded from living near his employment as he would desire by virtue of the illegal, unconstitutional and exclusionary practices." Appeal App. at 6. Mr. Ortiz subsequently filed an affidavit that avers in detail the deprivation on account of race and poverty alleged, Appeal App. at 188-202. Affidavits were also submitted in behalf of similar allegations of injury to Ms. Broadnax, a black person, Appeal App. at 203-09; Ms. Reyes, a Puerto Rican, Appeal App. at 210-14; and Ms. Sinkler, a black person, Appeal App. at 215-23.

[9] This Court, in other contexts, has noted that the effect of a zoning ordinance on certain property is at times indirect, without suggesting any difficulty with standing. "[A] zoning ordinance usually has an impact on the nature of the property which it regulates . . ., [even though] the precise impact on value may, at the threshold of litigation over validity not yet be known." *Belle Terre* v. *Boraas, supra*, 416 U.S. at 9-10; *Berman* v. *Parker*, 348 U.S. 26, 36 (1954); *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 397 (1926). The effect of the Penfield zoning ordinance on certain excluded persons should be similarly treated.

Moreover, it has long been recognized that a black person need not be physically denied admission to segregated facilities before he may challenge racial discrimination. See, *e.g.*, *Cypress* v. *Newport News G. & N. Hosp. Ass'n*, 375 F.2d 648 (5th Cir. 1967).

The standing of these class action plaintiffs who seek to dismantle the existing dual housing market which excludes them from living in the Penfield suburb is exactly the standing possessed by school desegregation plaintiffs who seek to disestablish dual school systems. See, *e.g.*, *Rogers* v. *Paul*, 382 U.S. 198, 200 (1965). Indeed, allegations of less traditionally cognizable forms of personal injury have been held to confer standing adequate to survive a motion to dismiss. "Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process." *Sierra Club* v. *Morton*, 405 U.S. 727, 734 (1972). The allegations of personal injury in *United States* v. *SCRAP*, 412 U.S. 669 (1974), although "far less direct and perceptible" than in *Sierra Club* were held adequate.

With regard to the organizational plaintiffs, this Court has held that, "It is clear that an organization whose members are injured may represent those members in a proceeding for judicial review. See, e.g., *NAACP* v. *Button*, 371 U.S. 415, 428," *Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972).[10] That associations may enforce rights in behalf of their members is a well established principle of standing law in civil rights litigation,[11] and this Court has long

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[10] See also, *United States* v. *SCRAP*, 412 U.S. 669, 683-90 (1973); *Allee* v. *Medrano*, —— U.S. ——, 40 L.Ed. 2d 566, 582 n. 13, 588-89 (1974); *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123, 153-54 (1951) (Justice Frankfurter concurring); *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534-35 (1925).

[11] See *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 458-60 (1958); *Bates* v. *Little Rock*, 361 U.S. 516, 523 n. 9 (1960); *Louisiana* v. *NAACP*, 366 U.S. 293, 296 (1961); *NAACP* v. *Button*, 371 U.S. 415, 428 (1963).

recognized that the difficult task of enforcing fair housing guarantees in particular requires application of realistic standing requirements.[12] Moreover, membership organizations have played a significant role in fair housing enforcement in the lower federal courts.[13]

Housing Council in the Monroe County Area, an association of various groups concerned with fair housing in the Rochester metropolitan area, alleges that, "Housing Council's claim in this action arose out of the same transactions and occurrences, and raises the same questions of law and fact, as are already before this Court." Appeal App. at 83. Housing Council, in the affidavit of its executive director filed with Motion and Notice of Motion, specifically avers that the Penfield zoning ordinance has resulted in injury to an identified member group.[14] Simi-

[12] *Buchanan* v. *Warley*, 245 U.S. 60, 72-73 (1917); *Barrows* v. *Jackson*, 346 U.S. 249, 254-59 (1953); *Sullivan* v. *Little Hunting Park*, 396 U.S. 229, 237 (1969); *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972).

[13] See, *e.g.*, *Norwalk CORE* v. *Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968); *Southern Alameda Span. Sp. Organ.* v. *City of Union City*, 424 F.2d 291 (9th Cir. 1970); *Kennedy Park Homes Assoc.* v. *City of Lackawanna*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971); *Park View Heights Corp.* v. *City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972); *United Farm Workers of Florida Housing Proj., Inc.* v. *City of Delray Beach*, 493 F.2d 799 (5th Cir. 1974); *Sisters of Prov. of St. Mary Woods* v. *City of Evanston*, 335 F. Supp. 396 (N.D. Ill. 1971); *Blackshear Residents Organ.* v. *H.A. of City of Austin*, 347 F. Supp. 1138 (W.D. Texas 1971).

[14] Upon information and belief, at least one such [charter member] group, viz. Penfield Better Homes Corporation, is and has been actively attempting to develop moderate income housing in the Town of Penfield, but has been stymied by its inability to secure the necessary approvals from the defendants in this action. Appeal App. at 91.

Similarly, the affidavit of Ann McNabb, a director of Penfield Better Homes, set forth actual terms of an application of Penfield Better Homes to build "a complex of cooperative housing

larly, intervenor Rochester Home Builders Association, a construction industry association, specifically alleges in its complaint that the Penfield zoning ordinance has injured its members by prohibiting them from "constructing and offering for sale or rental, housing to all segments of the community which require housing, particularly those persons of low and moderate income." Appeal App. at 80-81. Further, it is alleged that the members of the association, who have been responsible for constructing 80% of the private housing units in Penfield in the last 15 years, have been injured in the sum of $750,000 by reason of the challenged ordinance and its administration.

In short, the Housing Council and Rochester Home Builders alleged no less than did the NAACP in *NAACP* v. *Button*, *supra*, 371 U.S. at 428; Students Challenging Regulatory Agency Procedures, the Environmental Defense Fund, the National Parks and Conservation Association, and the Izaak Walton League of America in *United States* v. *SCRAP*, 412 U.S. at 678-80; or the United Farm Workers Organizing Committee in *Allee* v. *Medrano*, *supra*, 40 L.Ed. 2d at 582 n. 13. Thus, the decision of the Court of Appeals denying them standing is in conflict with the decisions of this Court and should be reversed.

units which would be sold to persons earning approximately $5,000.00 to $8,000.00 a year" and facts concerning the refusal to rezone by Penfield Planning Board and Town Board. Appeal App. at 311-13, 423-51. The affidavit of Housing Council's executive director also avers that, "The large majority of the charter member groups themselves have membership which is made up primarily of low and moderate income whites and non-whites and therefore directly represent the interests of such people." Appeal App. at 92.

CONCLUSION

For the foregoing reasons, the decision of the Second Circuit should be reversed.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1974

No. 73-2024

ROBERT WARTH, *Individually and on behalf of all other persons similarly situated*, LYNN REICHERT, *Individually and on behalf of all other persons similarly situated*, VICTOR VINKEY, *Individually and on behalf of all other persons similarly situated*, KATHERINE HARRIS, *Individually and on behalf of all other persons similarly situated*, ANDELINO ORTIZ, *Individually and on behalf of all other persons similarly situated*, CLARA BROADNIX, *Individually and on behalf of all other persons similarly situated*, ANGELEA REYES, *Individually and on behalf of all other persons similarly situated*, ROSE SINKLER, *Individually and on behalf of all other persons similarly situated*, METRO-ACT OF ROCHESTER, INC., HOUSING COUNCIL IN THE MONROE COUNTY AREA, INC., ROCHESTER HOME BUILDERS ASSOCIATION, INC.,

Appellants

v.

IRA SELDIN, *Chairman*, JAMES O. HORNE, MALCOLM M. NULTON, ALBERT WOLF, JOHN BETLEM, *as members of the Zoning Board of the Town of Penfield;* GEORGE SHAW, *Chairman*, JAMES HARTMAN, JOHN D. WILLIAMS, RICHARD C. ADE, TIMOTHY WESTBROOK, *as members of the Planning Board of the Town of Penfield;* IRENE GOSSIN, *Supervisor*, FRANCIS J. PALLISCHECK, DR. DONALD HARE, LINDSEY EMBREY, WALTER W. PETER, *as members of the Town Board of the Town of Penfield*, and the TOWN OF PENFIELD, NEW YORK,

Appellees

AMICUS CURIAE BRIEF
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INTRODUCTORY STATEMENT

Regional Housing Legal Services, Inc., is a non-profit corporation organized for the purpose of promoting development of housing for low-income persons. This Amicus Curiae Brief is filed for the purpose of discussion of the issues of the instant case in regard to the development of housing for low-income persons.

ARGUMENT

We do not intend to discuss all the issues raised in the instant case. The issues are typical of those which would be encountered in any exclusionary-zoning lawsuit instituted by parties other than a developer who is contesting the limitations upon development imposed on his specific site. These issues involve consideration of the requirements generally referred to as "justiciability", including Article III which requires that the lawsuit be a "case or controversy", "injury in fact" required for standing, "concrete adverseness" required for standing and justiciability, and ripeness of the controversy for judicial resolution.

We want to concentrate solely on these issues as they relate to the rights of future residents of a municipality, who are presently inadequately housed, and who desire to live in suitable dwelling units in the municipality in question, but who are unable to do so because those dwelling units have been prohibited by the zoning and land-use practices of the municipality. In the instant case, this would include Petitioners Broadnax, Sinkler, Reyes and Ortiz. In regard to these Petitioners, the Court of Appeals appeared troubled by two issues: (1) do these potential residents suffer an "injury in fact" if the zoning laws apply directly to landowners rather than to them; and (2) even if they are injured themselves by the limitations placed upon landowners, if they are not complaining about the restrictions imposed upon a specific site, does the case lack the "concrete adverseness" that is necessary for the court to cope with the problem?

These two issues are inter-related and both involve considerations of standing and of justiciability. If the potential residents have standing to raise the issue in court, which Professor Scott has described as "access standing", then the court will still consider whether the issue thus presented is suitable for decision by the courts, which he describes as "decision standing". See Scott, "*Standing in the Supreme Court—A Functional Analysis*", 86 *Harv. L. Rev.* 645 (1973). For access standing, the future residents must be asserting injury to their rights. In the instant case, these would be constitutional and statutory rights. One would assume that if their constitutional rights are being violated, that there would be an appropriate forum and suitable remedy for rectifying the violation of these rights. Whether this type of lawsuit brought in the federal courts is an appropriate means by which to raise these issues is the fundamental question before this Court.

A. Future residents have standing to challenge exclusionary-zoning practices because they are injured in fact by these practices.

It is important to recognize that the requirement of "injury in fact", as elaborated upon in the *Association of Data Processing Service Orgs. v. Camp*, 397 U.S. 150 (1970), and *Barlow v. Collins*, 397 U.S. 159 (1970) cases, does not require that the plaintiffs be the immediate subjects of the legislation being challenged. Plaintiffs who are the subjects of legislation, who we will refer to herein as "base plaintiffs," that is, plaintiffs whose conduct is required, prohibited or permitted by the legislation, have standing if they have rights at stake in the conduct which is being regulated. They usually do, and so they usually have standing, though there could be many situations in which these potential plaintiffs are actually not disturbed by the legislation or even approve of the limitations placed upon their conduct and that of other persons who would qualify as subjects of the legislation. We will mention some examples below.

In addition to the base plaintiffs, there are also potential plaintiffs who, while not being the subject of the legislation, find that their constitutional rights are violated by the legislation by reason of the impact of the legislation upon the realization of these rights. We will refer to these persons as "impact plaintiffs". As Justice Frankfurter recognized, "it is not always true that only the person immediately affected can challenge the action." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 154 (1951). The legislation may not apply to them directly and this will depend upon the context in which the legislation is framed, but the impact upon their rights may be substantial. In other words, there will be a "logical nexus" between the legislation and the deprivation of their constitutional rights. *Flost v. Cohen*, 392 U.S. 83 (1968).

The courts have traditionally found standing in comparable situations to the instant case in which the plaintiffs are impact plaintiffs rather than base plaintiffs. We want to mention several situations so that it is clear that the standing of impact plaintiffs usually raises no problems in situations where rights are violated, even though the legislation being challenged violates these rights by regulating the conduct of persons other than the impact plaintiffs:

(a) *Roe v. Wade*, 410 U.S. 113 (1973). The legislation regulates the conduct of persons who perform abortions, not of persons who desire abortions. In fact, the pregnant woman who participates in an abortion may not commit a crime at all. 410 U.S. at 151, n. 49. The Supreme Court found no difficulty in awarding standing to Jane Roe, even though the statute did not regulate her conduct. Moreover, in regard to ripeness, the Court only required that she have been pregnant and desired an abortion. It was not necessary for her to knock on doctors' doors and be refused an abortion or for her to establish that such doctors would be available if the anti-abortion statute was invalidated. Applying this reasoning to the situation of the future resi-

dent, it should be sufficient for standing purposes if the plaintiff desires to live in the municipality in question and if suitable dwelling units have not been built in that municipality because of illegal zoning practices. He need not establish that he went to a vacant lot and attempted to knock on a non-existent door to inquire if housing for him was available. He need not bring a developer with him to court to testify that the housing would be built if the legislation is invalidated. We may assume in this case, as we can in the abortion case, that once the restrictions are removed, the subjects of the legislation will act in the manner desired by the impact plaintiffs, even though they will not be legally required to do so. In other words, doctors may refuse to perform abortions. They are not legally required to perform them, especially if there is no medical necessity for the abortion. Developers may not build housing for poor people. All that the impact plaintiff desires is that the subjects of the legislation not be legally prohibited from pursuing a course of conduct which results in the realization of their rights.

(b) *Loving v. Va.*, 388 U.S. 1 (1967). This is a challenge to a miscegenation statute. Notice in this example how the legislature may control by the context of the legislation exactly who will be the subject of the legislation. If the miscegenation statute prohibits black persons from marrying white persons, and makes it a criminal offense for the black persons to marry but not for the white persons, the black suitor would be a base plaintiff and the potential white spouse would be an impact plaintiff. The situations could be reversed by imposing the restriction upon the white partners. If the statute applied to clerks in the marriage-license bureau and restricted them from issuing marriage licenses to a racially-mixed couple, the subject of the legislation would be the clerk. Not only may he have no interest in instituting litigation, but he really has no rights at stake in the litigation. The impact plaintiffs would include both the white and black marital candidates if this legislation had the clerk as its subject.

(c) *Truax v. Reich*, 239 U.S. 33 (1915). Standing was granted to an alien employee to challenge a state statute requiring employers to discharge all but a specified portion of alien employees. (If there existed a sufficient supply of non-alien laborers, the employer like the clerk in the previous example, would have no interest in instituting litigation).

(d) *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963). Publishers have standing to challenge legal action threatened against distributors. The Court indicated that "pragmatic considerations argue strongly for the standing of publishers in cases such as the present one. The distributor who is prevented from selling a few titles is not likely to sustain sufficient economic injury to induce him to seek judicial vindication of his rights. The publisher has the greater economic stake, because suppression of a particular book prevents him from recouping his investment in publishing it. Unless he is permitted to sue, infringements of freedom of the press may too often go unremedied." 372 U.S. at 636, n. 6. See also *Two Guys from Harrison-Allentown, Inc. v. McGinley*, 366 U.S. 582 (1961), in which standing was granted to the employer to challenge prosecution of his employees and *Sam Andrews Sons v. Mitchell*, 326 F. Supp. 35 (S.D. Calif. 1971), in which standing was granted to the employer of Mexicans to challenge a regulation prohibiting them from accepting employment where a labor dispute exists.

(e) *Adler v. Board of Education*, 342 U.S. 485 (1951). Parents of school children apparently given standing to challenge a state law concerning eligibility requirements for employment as a school teacher. See also *Rogers v. Paul*, 382 U.S. 198 (1965) in which pupils were granted standing to challenge the racially-discriminatory allocations of faculty, and *Lee v. Nyquist*, 318 F. Supp. 710 (W.D. New York 1970) involving a challenge by parents of school children to a law applying to state education officials and

members of school boards. Parents of school children were also granted standing in *Engel v. Vitale*, 374 U.S. 421 (1962) and *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 267, n. 30 (1963), in which the Court recognized that to deny the parent standing "might effectively foreclose judicial inquiry."

(f) *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951), in which Justice Burton recognized the distinction we are urging upon the Court in the instant case:

> "It is unrealistic to contend that because the respondents gave no orders directly to the petitioners to change their course of conduct, relief cannot be granted against what the respondents actually did. We long have granted relief to parties whose legal rights have been violated by unlawful public action, although such action made no direct demands upon them." 341 U.S. at 141.

(g) *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Standing granted to a private school to enjoin enforcement of a statute requiring parents to send their children to public schools.

(h) *F.C.C. v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940). A competitor is granted standing to intervene in another party's license application hearing. This decision has been cited for allowing standing to competitors in numerous situations. It has also been extended to non-competitor situations. See *Columbia Broadcasting System v. U.S.*, 316 U.S. 407 (1942), in which the Court indicates that "the fact that the regulations are not directed to appellant and do not in terms compel action by it or impose penalties upon it because of its action or failure to act" will not preclude the recognition of standing. "It is enough that, by setting the controlling standards for the Commission's action, the regulations purport to operate to alter and affect adversely appellant's contractural rights and business

relations . . ." 316 U.S. at 422. See also *Office of Communications of the United Church of Christ v. F.C.C.*, 359 F.2d 994 (D.C. 1966) and cases cited therein, 359 F.2d at 1002, in which Chief Justice Burger, sitting on the Court of Appeals, extended the concept of standing as set forth in *Sanders* to members of the listening audience.

(i) *Doe v. Wohlgemuth*, 376 F. Supp. 173 (W.D. Pa. 1974). Welfare recipients have standing to challenge state's refusal to provide to hospitals reimbursement for the cost of abortions. See also *Tucker v. Hardin*, 430 F.2d 737 (1st Cir. 1970).

(j) *Shannon v. HUD*, 436 F. 2d 809 (3rd Cir. 1970). Standing granted to persons living in the vicinity of an urban renewal project. If neighbors may be impact plaintiffs, which is generally accepted in zoning litigation, then there is no reason why potential residents should not also be given standing.

As the Court indicated in *Flost v. Cohen*, 392 U.S. 83 (1968) and elaborated upon in *U.S. v. Scrap*, 412 U.S. 669 (1973), the impact plaintiffs must show a "logical nexus" between the legislation being challenged and the violation of their rights. This is essentially a question of degree of remoteness to the situation. The mother of Jane Roe may lack standing even though she will be stuck with the task of raising the child if Jane Roe is denied her abortion. Similarly, the parents of the young man who wants to move to Penfield, who are inconvenienced by his inability to move from their household, would probably lack standing. But Jane Roe herself and the potential resident himself have standing to challenge the legislation which has an impact upon their lives, even though they are not the subject of the legislation.

Their standing is based not only on the impact of the legislation upon their rights, but because they assert fundamental interests (in the instant case, the right to housing

and the related rights of employment, travel and education) which can be recognized only if they are granted standing to assert these interests. It is sufficient for access standing that they possess these rights, that there is a "logical nexus" between these rights and the legislation being challenged, and that they have been "injured in fact" by the legislation, even though they are not the subjects of the legislation. There still remains, however, the question of decision standing.

B. Future residents may litigate the invalidity of zoning restrictions imposed upon the entire municipality and are not limited to challenging the restrictions as they apply to a specific site.

If a lawsuit is brought challenging exclusionary zoning by a base plaintiff, it is obvious that his cause of action will revolve around the restrictions as they apply to his specific site. Since the ordinance has a direct impact upon development on a particular parcel, the case will focus upon the relationship between the proposed development and the limitations imposed upon its fruition. The federal courts have heard many of these cases, including some in which impact plaintiffs (future residents) joined with base plaintiffs (the landowner or developer). See *Kennedy Park Homes v. Lackawanna*, 318 F. Supp. 669, *aff'd*, 436 F.2d 108 (2d Cir.), *cert. denied*, 401 U.S. 1010 (1970); *Dailey v. Lawton*, 425 F.2d 1037 (10th Cir. 1970); *Sisters of Providence v. City of Evanston*, 335 F. Supp. 396 (N.D. Ill. 1971); and *United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach*, 493 F.2d 799 (5th Cir. 1974).

In some of the specific site cases, the controversy began as a challenge to restrictions upon a particular parcel but developed into a more generalized attack upon the zoning practices in general. See *Southern Alameda Spanish-Speaking Org. v. Union City*, 424 F.2d 291 (9th Cir. 1970 and *Crow v. Brown*, 457 F.2d 788 (5th Cir. 1972). This poses, in essence, a question of appropriate relief,

rather than the problem of decision standing. The point is, and we will elaborate upon this below, that it does not necessarily follow from the fact that a lawsuit is instituted by a developer about a specific development that the challenge may not also be directed to the problem of zoning restrictions that invariably prohibit development in general.

This Court has already considered cases involving restrictions upon housing in general, which did not concern the validity of restrictions as they applied to a specific site: *James v. Valtierra*, 402 U.S. 137 (1971); *Reitman v. Mulkey*, 387 U.S. 369 (1967); *Hunter v. Erikson*, 393 U.S. 385 (1969); and *Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926).

Standing has been recognized by the federal courts in comparable situations involving access to housing. See *Gautreaux v. Chicago Housing Authority*, 265 F. Supp. 582 (N.D. Ill. 1967) in regard to the rights of tenants of public housing projects; *Norwalk Core v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir. 1968) in regard to the rights of displacees of an urban renewal project; and the cases already discussed.

When the lawsuit is brought by an impact plaintiff rather than a base plaintiff, it frequently happens that the context of the lawsuit may differ from that in which it would be framed if the subject of the challenged act brought the case. The subject of the statute will be able to refer to a specific episode in which the statute was applied, or threatened to be applied, to the conduct in question. The impact plaintiff will frequently be unable to do so.

The woman seeking an abortion may knock on doctors' doors and be rebuffed, but this should not be essential to bringing her case since the challenged statute makes it a criminal offense for the doctors to respond to her plea. The individual seeking employment in the *Truax* situation may go from office to office and be rebuffed in her efforts to find a job. But this is not a precondition to bringing the lawsuit since she is permitted to assume that the employer will obey the statute and deny her employment. The person who desires to reside in Penfield, but is unable to do so because

of the lack of adequate housing there, may urge landowners to build such housing. However, so long as the zoning ordinance prohibits the landowners from doing so, urging upon them that they disregard the law or challenge its validity themselves should not be a precondition to the future resident instituting litigation himself.

"Concrete adverseness" in a lawsuit instituted by an impact plaintiff arises from the collision of the constitutional rights and the imposition upon other persons of restrictions upon their conduct which interferes with realization of these rights. The parties are certainly adverse; the issues are clearly drawn; and the cases are judicially manageable.

The complaint of the future resident does not relate to the development of a particular project that has been thwarted. The complaint of the woman desiring an abortion does not relate to a particular doctor refusing to perform the abortion. The complaint of the woman seeking employment does not relate to a particular job offer. In each of these situations, the challenge is brought to an entire system of regulation which denies the plaintiff his rights by imposing restrictions upon others which would require those third parties to violate the law in order to vindicate the plaintiff's rights. These third parties may be willing to do so. See *Griswold v. Conn.*, 381 U.S. 479 (1965). But it is not essential to the framing of a lawsuit challenging the system of denial of these rights that the impact plaintiff persuade a member of the class which comprises the subject of the legislation that they should violate the legislation in order to litigate the issue. For the base plaintiffs, who are free to so act, this is not an unreasonable requirement in some situations. See *Poe v. Ullman*, 367 U.S. 497 (1961). For the impact plaintiffs, it is always unreasonable because it allows their rights to be placed at the mercy of third parties who may not find it advantageous to act in their behalf.

It is important to note that there is not an exact paralleling of interests between the developers and the future

residents. Not only are there economic reasons which may make it difficult for developers to initiate the necessary lawsuits, but, in many instances, it may be more practical for developers to agree to restrictive practices rather than contest them. Consider, for example, the situation which arises when the municipality imposes excessive requirements upon a developer which will affect the ultimate price of the house which he sells. So long as the house can be sold at that ultimate price, the developer may conclude that it is easier to agree to the requirements and get the house built rather than institute litigation to challenge the legality of the requirements in order to cut costs for the future buyers of the homes. It is, obviously, the future buyers of the homes who will suffer, since the costs will be passed along to them.

It is also important to note that, in order to accomplish a change in the prevailing system of zoning practices, those persons whose constitutional rights are most seriously at stake must be accorded standing so that they can assert their constitutional rights and present their arguments to the courts. The future residents, unless they are accorded standing, will be denied the opportunity to contest the legality of actions of municipal officials which have excluded them. They have had no political impact upon these decisions because they are not residents of the municipality. Unless the courts agree to hear their claims, they will be denied the right to participate in all phases of the governmental decision-making process because it is inextricably connected with the residential access which they have been denied.

Supreme Court decisions have emphasized the importance of access to the democratic process where the issue to be decided has a direct and substantial bearing on an individual's interests. *Dunn v. Blumstein*, 405 U.S. 336 (1972); *Phoenix v. Kolodziezski*, 399 U.S. 204 (1970); *Evans v. Cornman*, 398 U.S. 419 (1970); *Cipriano v. Houma*, 395 U.S. 701 (1969); *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969). The excluded persons would be

residents if they had not been excluded. They should not be denied standing to challenge their exclusion on the basis that they are not residents.

Similarly, the claim of future residents does not become ripe only if they have applied for a building permit to build a project on a particular site and been denied the permit. They are not builders and they do not own a particular site. Their claim is ripe when they seek the housing and are unable to find it. To return to our analogy above of the pregnant woman, it is not essential that the pregnant woman be also a doctor who wants to perform an abortion on herself. Her claim is ripe when she needs an abortion; the future resident's claim is ripe when he needs housing.

The relationship between the housing which is desired and the illegal practices which prevent the construction of this housing should be considered only after a trial on the merits. There may be no such relationship. There may be other factors which have prevented construction of the housing. But this can be determined only after the parties to the controversy have presented all of their evidence. Since the future resident is basing his challenge upon constitutional grounds, he is arguing, of course, that his interests are included within the "zone of interests" of the constitutional provision upon which he is relying. Full consideration of whether or not he possesses such interests should be decided only after a full trial and argument. The allegation of such rights should be sufficient at this stage.

Similarly, there may be some question about whether or not the individual Petitioners really desire housing in Penfield and whether or not more determined efforts to find such housing would have proven successful in securing such housing. This issue should also wait until there is a full hearing on the merits and should not be decided upon a record that consists primarily of the pleadings.

To return to our analogy of the pregnant woman for the last time, her case may not be ripe if she is not really pregnant or if abortions are being regularly performed

despite the letter of the law. See, however, *Epperson v. Ark.*, 393 U.S. 97 (1968) in which general non-application of the law may still not preclude a challenge to it. The reason for denial of the rights is a matter of defense which should be considered only after a full hearing.

CONCLUSION

Neither Article III standards of case or controversy, basic principles of standing, nor the requirements of justiciability and ripeness, operate to prevent a potential resident from challenging the invalidity of his exclusion from a particular community. Such exclusion violates fundamental rights of satisfaction of housing needs, obtaining of employment opportunities, and attendance at integrated educational institutions. This exclusion prevents these persons from residing in integrated communities and denies their right to travel and their right to fair housing opportunities.

Procedural prerequisites should never be applied to deny substantive rights. Existence of these substantive rights implies the existence of all necessary and appropriate remedies. *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969). Granting standing to future residents is in keeping with the finest traditions of our jurisprudence and the precedents of this Court. It will further aid in realization of our national goal of a "decent home and a suitable living environment" as expressed in congressional statutes which have been part of our national policy since 1937. The Housing Act of 1937, 42 U.S.C. §1401; Section 2 of the Housing Act of 1949, 42 U.S.C. Section 1441; Section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701(t); Housing and Community Development Act of 1974, Public Law 93-383, Section 1, 101(C).

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-2024

ROBERT WARTH, et al.,

Petitioners,

v.

IRA SELDIN, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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IN THE

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ON WRIT OF CERTIORARI TO THE UNITED STATES
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BRIEF *AMICUS CURIAE* OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

INTEREST OF *AMICUS CURIAE**

The Lawyers' Committee for Civil Rights Under Law was organized on June 21, 1963 following a conference of lawyers called at the White House by President John F. Kennedy. The Committee's mission was to help transfer the process of decision on minority Americans' claim for equal justice from violent repression in the streets

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*Both the petitioners and the respondents have consented to the filing of this brief. Copies of their letters have been filed with the Clerk.

to civil hearing on the merits in federal courts. The Lawyers' Committee remains a nonprofit private corporation whose principal purpose is to involve private lawyers throughout the country in the struggle to assure all citizens of their civil rights through legal process. The Board of Trustees of the Committee includes eleven past presidents of the American Bar Association, three former Attorneys General, and two former Solicitors General.

The Lawyers' Committee and its local committees, affiliates, and volunteer lawyers have been actively engaged in providing legal representation to those seeking relief under federal civil rights legislation and the Reconstruction Amendments to the Constitution. Such litigation includes cases raising housing discrimination issues similar to those presented in the complaint in this case. See, e.g., *Shannon v. HUD*, 436 F.2d 809 (3rd Cir. 1970). Our interest in this case, however, involves the most basic concern of the Lawyers' Committee: the right of minority Americans to have their claims for civil rights under federal law adjudicated on the merits in federal court. With this Supreme Court, we " '. . . believe that wherever the Federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication. . . .' "[1]

The instant case presents, *inter alia*, a challenge under the Fourteenth Amendment and the post-Civil War civil rights acts to discriminatory government action based on race: the alleged exclusion of minority-race citizens from residence in a community by the discriminatory action of respondent public officials. The court of appeals has held, however, that those who are the objects

[1] *Zwickler v. Koota*, 389 U.S. 241, 248 (1967).

of such alleged government discrimination, as well as their representatives who are secondarily affected, do not have "standing" in the federal courts to present the challenge. That ruling, in our judgment, constitutes an unwarranted expansion of this Court's "rule of self-restraint"[2] which is inimical to the congressional purposes and national policy underlying most, if not all, of the substantive and jurisdictional civil rights legislation. Because *amicus* believes that the federal courts "are not at liberty to seek ingenious analytical instruments"[3] for evading congressionally-mandated civil rights jurisdiction, we have a vital interest in this case which is broader than that of the immediate litigants. The Lawyers' Committee therefore files this brief as friend of the Court urging reversal.[4]

STATEMENT OF THE CASE

Petitioners invoked the jurisdiction of the district court under 28 U.S.C. §§1331 and 1343 seeking declaratory (28 U.S.C. §2201) and injunctive relief, and money damages, for alleged violations of 42 U.S.C. §§1981, 1982 and 1983, and the First, Ninth and Fourteenth Amendments to the Constitution. Reading petitioners' complaints with the liberality required by federal practice, and as elaborated by the affidavits filed in opposition to respondents' motion to dismiss,[5] peti-

[2] *Barrows v. Jackson*, 346 U.S. 249, 255 (1953).

[3] *United States v. Price*, 383 U.S. 787, 801 (1966).

[4] We do not, however, take a position on petitioners' claim of standing as taxpayers, as we conclude (part III, *infra*) that the Court need not and should not reach that issue.

[5] It is, of course, appropriate for this Court to look, as did the court of appeals, to the affidavits filed in opposition to respondents' motion to dismiss. *Cf. Willingham v. Morgan*, 395 U.S.

[footnote continued]

tioners charge respondents[6] with adopting and manipulating the residential zoning laws of the town of Penfield, Monroe County, New York, for the successful purpose of excluding racial minorities and the poor from residing in the town. The courts below held that none of the petitioners have standing to sue.[7] The status of petitioners is therefore at the heart of this controversy in its present posture. We divide petitioners into three categories.

1. *Non-White Petitioners.* Petitioners Ortiz, Broadnax, Reyes and Sinkler (hereafter "non-white petitioners") are non-white persons[8] residing in or around the city of Rochester, New York who desire to reside in the adjacent Town of Penfield through the purchase or rental of real property. Three of these petitioners live in ghetto conditions in the central city area of Rochester in deplorable housing and an otherwise unsuitable environment. Each petitioner has attempted, but has been unable, to secure affordable housing in the town of Penfield. (A. 362-77, 404-21, 422-29, 435-53). In addition, in the recent past petitioner Ortiz worked in the town of Penfield but, because of his inability to find housing, was forced to live over 40 miles from his job and incur

402, 407 n.3 (1969). Respondents did not move for summary judgment, nor have they otherwise challenged the complaint and affidavit allegations in support of standing. *Cf. United States v. SCRAP*, 412 U.S. 669, 689-90n.15 (1973).

[6] Respondents are the Town of Penfield and the respective members of its Town Board, Planning Board and Zoning Board.

[7] The district court's order of dismissal is unreported and appears at pages 1-4 of Appendix B to the petition for certiorari (hereafter, "Pet. App."). The Second Circuit's opinion is reported at 495 F.2d 1187, and appears in Pet. App. A at 1-16.

[8] Two of these petitioners are Negroes, one is Puerto Rican and one is of Spanish/Puerto Rican extraction.

substantial commuting expenses. (A. 366-71). The non-white petitioners allege that they are unable to reside in Penfield because of that town's zoning policies and practices which have the exclusion of non-whites and the poor as their purpose and effect. (A. 17-29, 362-64, 404-06, 422-24, 435-37.

2. *Organizational Petitioners.* Petitioner Metro-Act of Rochester, Inc. (hereafter "Metro-Act") is a New York nonprofit corporation having its principal office in Rochester. Metro-Act was founded in 1965 following Rochester's 1964 "race riots," the product of longstanding policies and practices of racial discrimination against blacks and other minorities in such areas of daily life as housing, education, employment and community services. (A. 181-82). Metro-Act has approximately 350 members (9% of whom live in Penfield) whose organizational purposes include seeking open (non-discriminatory) housing in suburban areas of Rochester. (A. 183-85). Petitioner has advocated zoning changes to eliminate racial and economic barriers and has conducted formal studies of housing needs in the Rochester metropolitan area; it has made low- and moderate-income housing proposals to various suburban towns, including Penfield; and, in particular, prior to the institution of this lawsuit Metro-Act's housing task force and other of its officers met with Penfield's town leaders on several occasions, culminating in an open housing proposal by Metro-Act which died of frustration. (A. 185-95).

Petitioner Rochester Home Builders Association, Inc. (applicant for intervention in the district court) (hereafter "Home Builders") is a New York nonprofit corporation whose organizational purposes, among others, are to act as a nonprofit trade association representing persons and companies engaged in the construction and development (and ancillary activities) of residential hous-

ing in the Monroe County area, to foster and promote the housing industry, to promote civic development and secure even and just taxation, and to promote and encourage the provision of adequate housing for all members of the community. (A. 139-43). Its principal office is in Rochester; 110 of its members are engaged in the construction of housing (sale and/or rental); 10% of its members have constructed housing in Penfield; and, except for government-constructed units, its members are responsible for over 80% of the single-family homes and 90% of the multi-family units constructed in Monroe County in the last 15 years. Petitioner's members have also constructed over 80% of the private housing built during the last 15 years in Penfield. (A. 145-47). The attempts of petitioner's members and others to construct low- and moderate-income housing in Penfield have been frustrated by respondents' actions, thereby depriving petitioner's members of substantial business opportunities and profits. (A. 154-57). Moreover, respondents have threatened to retaliate against Home Builders and its members for becoming involved in this litigation. (A. 158-59).

Petitioner Housing Council in the Monroe County Area, Inc. (added plaintiff in the district court) (hereafter "Housing Council") is a nonprofit corporation having its principal office in Rochester. It was organized in response to a 1970 study of housing conditions in Monroe County prepared by the Rochester Center for Governmental and Community Research for the Metropolitan Housing Committee (sponsored jointly by the governments of Rochester and Monroe County). (A. 170-71). Petitioner's purposes, generally, are to provide assistance and leadership in combating community deterioration and eliminating racial and economic discrimination and prejudice in housing. Housing Council's membership consists of 71 public and private organizations having interests in housing; 17 of them are or hope to be involved in the development and construction of low- and middle-income housing; 1 member, Penfield Better Homes Corp., is and has been actively attempting to develop housing in Penfield to meet the demands of low-income persons, but has been "stymied" in such efforts by respondents. (A. 171-74). Some of Housing Council's members are local government agencies with direct interests in the provision of low- and middle-income housing; a majority of its member groups have memberships composed primarily of minority and poor people. (A. 174-75).

3. *Taxpayer Petitioners.* Petitioners Warth, Reichert, Vinkey and Harris are resident-citizen property owners of Rochester who, as a result of respondents' discriminatory policies and practices, have to pay a disproportionate share of real estate taxes to the city of Rochester because Rochester has to assume more than its fair share of tax-abated housing projects to meet the demands of low- and moderate-income people in the metropolitan area. (A. 3-6, 456-86).

The district court, on respondents' motion to dismiss or for a more definite statement and for an order denying class action status to the suit, held that (1) all petitioners are without standing to sue, (2) petitioners have stated no claims upon which relief can be granted, and (3) the suit should not be treated as a class action. The court of appeals affirmed on the exclusive ground that petitioners lack standing.[9]

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[9] Although the district court dismissed the complaint for failure to state a claim, which constitutes a determination on the merits (*see Bell v. Hood*, 327 U.S. 678, 682 (1946)), the court

[footnote continued]

SUMMARY OF ARGUMENT

First, this action presents a clear "case or controversy" under Article III of the Constitution. Although not specifically referred to in their pleadings for either jurisdictional or cause-of-action purposes, petitioners' allegations state claims over which the district court has jurisdiction under § 812 of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3612. The court of appeals erred, therefore, in not deciding the standing questions according to the principles announced in *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972), under which standing is confined only by Article III case-or-controversy requisites. The non-white and organizational petitioners thus have standing under Title VIII, which also entitles them to litigate their other federal claims.

Second, by the post-Civil War civil rights legislation Congress also intended to define standing as broadly as is constitutionally permissible, particularly for challenges to

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of appeals passed only on the standing issues, quite properly recognizing that "[i]t would not be necessary to decide whether appellants' allegations . . . will, ultimately, entitle them to any relief, in order to hold that they have [or lack] standing to seek it." *Baker v. Carr*, 369 U.S. 186, 208 (1962). See also *Flast v. Cohen*, 392 U.S. 83, 99-100 (1968). Our view of the standing questions thus requires a remand to the court of appeals for further proceedings. It does not seem inappropriate, however, to note that, upon any fair reading of the complaints and affidavits of record, it cannot now be said that "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 335 U.S. 41, 45-46 (1957). While all of petitioners' claims are substantial and entitled to determination on their merits, it is the racial discrimination claims "to which we direct our most careful attention. For while the law with regard to classifications based on wealth may still be in a state of flux, it cannot now be doubted that under our Constitution, distinctions in treatment based on race are inherently suspect." *United Farmworkers v. City of Delray Beach*, 493 F.2d 799, 808 (5th Cir. 1974).

government-sponsored discrimination. 42 U.S.C. § § 1981, 1982 and 1983, as well as the civil rights jurisdictional grants, 28 U.S.C. § § 1331 and 1343, which are designed to keep the promises of the Thirteenth and Fourteenth Amendments, thus mandate broad standing rules. This Court has recognized as much in a long line of land use discrimination cases finding third-party standing.

The standing questions in this case must therefore be decided in harmony with the liberal rules enunciated in *Trafficante* and the Administrative Procedure Act cases (e.g., *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970) and *United States v. SCRAP*, 412 U.S. 669 (1973)); for the civil rights statutes involved here deserve no less respect.

Thus, the non-white petitioners, who claim in essence that they are excluded from residing in the Town of Penfield and are confined to a state-imposed ghetto for which respondent state officers and instrumentalities bear partial responsibility, have clearly alleged "injury in fact." And, just as clearly, their claims fall within the "zone of interests" protected by the relevant statutes and constitutional provisions. Failure to accord standing to these petitioners would result in a degree-of-discrimination test for standing which would immunize from judicial review those modes of discrimination which are most successful.

Similarly, the organizational petitioners also have standing, although their injury is secondary and accrues primarily through their members. While their standing should be established by this Court's decisions in *Sierra Club v. Morton*, 405 U.S. 727 (1972) and *United States v. SCRAP, supra*, their standing is mandated, as it will frequently be in cases of this nature, by the prin-

ciples of *NAACP v. Button*, 371 U.S. 415, 428-29 (1963) and *NAACP v. Alabama*, 357 U.S. 449, 458-60 (1958).

Finally, litigation of the claims of the non-white and organizational petitioners will effectively vindicate the claims and interests of the taxpayer petitioners. It is therefore unnecessary to decide whether the latter have standing, in the context of this case, to sue as taxpayers.

ARGUMENT

I.

THE NON-WHITE AND ORGANIZATIONAL PETITIONERS HAVE STATED A "CASE OR CONTROVERSY" UNDER ARTICLE III; THEY THEREFORE HAVE STANDING UNDER TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968.

A. A "Case or Controversy" Is Present.

The threshold inquiry, as in all of this Court's standing decisions, is whether the non-white and organizational petitioners "have the personal stake and interest that impart the concrete adverseness required by Article III." *Barlow v. Collins*, 397 U.S. 159, 164 (1970). As to the non-white petitioners, the court of appeals, relying on this Court's decision in *O'Shea v. Littleton*, 414 U.S. 488 (1974), found their "personal connection" with the allegations of wrongful conduct on the part of respondents "too abstract, conjectural, and hypothetical to establish an Article III case or controversy." (Pet. App. A at 12). That conclusion misunderstands the record and misapplies *O'Shea*.

Aside from the obvious distinction that *O'Shea* involved requests for injunctive relief against the conduct

of judicial officers in criminal proceedings (and the additional justiciability and equity-jurisprudence issues thereby raised),[10] the critical difference is that none of the plaintiffs in *O'Shea* was "identified as having himself suffered any injury in the manner specified." 414 U.S. at 495. That is, none of them had been subjected to the alleged discriminatory bond-setting, sentencing and jury-payment practices. In the instant case, by contrast, it is charged that respondents have excluded housing for low-income people from Penfield for the purposes of racial and economic discrimination. The non-white petitioners, who are also poor, allege that they have sought but been unable to find housing within their means in Penfield *because of respondents' discriminatory policies and practices.* The result, they allege, is confinement to a ghetto environment without access to decent jobs, decent housing, adequate education for their children and recreational facilities. They allege more than the mere stigma of racial discrimination, although we should think that that would be enough. *Cf. Brown v. Board of Education*, 347 U.S. 483, 494 (1954). Manifestly, these petitioners allege that they *themselves* have "suffered . . . injury in the manner specified."

The court of appeals, while frequently fusing case-or-controversy and standing considerations, did not expressly hold that the organizational petitioners had failed to meet Article III requirements. We think it clear, in any event, that these petitioners have stated a "case or

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[10] The Court noted that its "reluctance to interfere with the normal operation of state administration of its criminal laws in the manner sought by respondents strenghtens the conclusion that the allegations in this complaint are too insubstantial to warrant federal adjudication of the merits of respondents' claim." 414 U.S. at 498-99.

controversy." They allege that respondents' conduct has frustrated their respective organizational purposes; that all or some of their members have been directly affected in the same manner as the non-white petitioners; and that some of their members have been secondarily affected by the loss of business opportunities attendant upon respondents' frustration of construction and development of lower-income housing. As will be elaborated further in later parts of this brief discussing organizational standing (*see* Parts IC and II B 2, *infra*), these petitioners meet Article III requirements. *Cf. Allee v. Medrano*, 92 S. Ct. 2191, 2202n.13 (1974); *id.* at 2207 (Burger, C. J., concurring and dissenting).

In sum, for present purposes, the non-white and organizational petitioners have alleged "[t]he important [Article III] ingredient . . . [of] governmental activity directly affecting, and continuing to affect, the behavior of citizens in our society." *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 126 (1974). They have sufficient interest in challenging the statute's validity [as well as its application] to satisfy the 'case or controversy' requirement of Article III of the Constitution." *Eisenstadt v. Baird*, 405 U.S. 438, 444 (1972). Their claims are "presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Flast v. Cohen*, 392 U.S. 83, 101 (1968).[11] *See generally, Village of Belle Terre v. Borass*, 416 U.S. 1 (1974); *Steffel v. Thompson*, 415 U.S. 452 (1974); *Flast v. Cohen, supra*,

[11] Because "standing" rules are designed to insure the case-or-controversy strictures of Article III (*Barrows v. Jackson*, 346 U.S. 249 (1953)), it necessarily follows that if a petitioner has standing, he has met Article III requirements. Hence, our discussions of standing, as such, which follow will provide additional support for the conclusion in text that petitioners' claims constitute a case and controversy.

392 U.S. at 94-101; *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941); *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 229, 240-41 (1937).

B. Petitioners' Allegations State Claims Under Title VIII of the Civil Rights Act of 1968; the Standing Questions Should Therefore be Decided Under Title VIII.

Section 804 of the Civil Rights Act of 1968 makes it unlawful, *inter alia*, "to refuse to negotiate for the sale or rental of, *or otherwise make unavailable or deny*, a dwelling to any person because of race, color . . . or national origin" and "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color . . . or national origin." 42 U.S.C. § § 3604(a) and (b) (emphasis added). In addition, § 815 provides that

> any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

42 U.S.C. § 3615. Petitioners' allegations in the instant case—that respondents, for the purpose of excluding non-whites, have refused to make available lower-income housing in the town of Penfield—thus state colorable claims under Title VIII. *See, e.g., Parkview Heights Corp. v. City of Blackjack*, 467 F.2d 1208 (8th Cir. 1972); *Kennedy Park Homes Ass'n v. City of Lackawanna*, 318 F.Supp. 669 (W.D.N.Y.), *aff'd*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971); *United States v. City of Parma*, P.H.E.O.H. Rptr. ¶ 13,616

(N.D. Ohio Sept. 5, 1973). The district court has jurisdiction of these claims under § 812, 42 U.S.C. § 3612.

Although petitioners do not explicitly refer to Title VIII as a basis for jurisdiction, the court of appeals should have nevertheless decided the standing issues—which, if not technically jurisdictional in nature, have clear jurisdictional overtones—under Title VIII and this Court's decision in *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972). To have done otherwise was to adhere to "wholly outmoded technical pleading rules. . . ." *Bowers v. Campbell*, ____ F.2d ____ n.2 (9th Cir. October 24, 1974) (cause of action stated under 42 U.S.C. § 1981 although the statute was not cited in the pleadings). We therefore urge this Court to treat petitioners' pleadings and affidavits as making colorable Title VIII claims. *See Willingham v. Morgan*, 395 U.S. 402, 407n.3 (1969); 28 U.S.C. § 1653.[12]

C. Petitioners Have Standing Under Title VIII and Trafficante, Which Also Entitles Them to Litigate Their Other Federal Claims.

In *Trifficante v. Metropolitan Life Ins. Co., supra*, this Court held that the Title VIII definition of "person aggrieved" (§ 801(a), 42 U.S.C. § 3610(a)) "showed 'a congressional intention to define standing as broadly as is permitted by Article III of the Constitution.'" 409 U.S. at 209 (quoting *Hackett v. McGuire Brothers, Inc.*, 445 F.2d 442, 446 (3d Cir. 1971)). The Court rejected a lower court holding that allowed standing "only by persons who are the objects of discriminatory housing

[12] 28 U.S.C. § 1653 provides: "Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." *See generally*, 7B *Moore's Federal Practice* § 1653 (2d ed. 1973); 3 *Moore's Federal Practice* ¶15.08 [2] (2d ed. 1972).

practices," and held that white tenants of a housing complex have standing to challenge their landlord's racially discriminatory policies and practices. The Court found "injury in fact" from "the loss of important benefits from interracial associations." 409 U.S. at 210. Noting that "the language of the Act is broad and inclusive" (*id.* at 209), and that Congress' intent was "to replace the ghettos 'by truely integrated and balanced living patterns.' 114 Cong. Rec. 3422" (*id.* at 211), the Court emphasized the role of "private attorneys general"

> in protecting not only those against whom a discrimination is directed but also those whose complaint is that the manner of managing a housing project affects "the very quality of their daily lives."

Id. (quoting from *Shannon v. HUD*, 436 F.2d 809, 818 (3d Cir. 1970)).

The instant case is much easier, at least as to the non-white petitioners, for even under a narrow construction of Title VIII they are among "those against whom a discrimination is directed . . ." and their "injury in fact" is even greater and much more concrete than "the loss of important benefits from interracial associations." The injury which these petitioners allege is, in fact, more ominous than the impairment of "the very *quality* of their daily lives"—it is, in a very real sense, their and their children's *lives* which are at stake.[13]

The organizational petitioners are also "persons aggrieved" who have standing under Title VIII and *Trafficante*.[14] Congress defined "person" broadly to include

[13] One of the petitioners, for example, keeps the bedroom light on all night to prevent the rats and mice from biting her children. (A. 411-12).

[14] Jurisdiction in *Trafficante*, where the federal civil action was preceded by a complaint to the Secretary of HUD under 42 U.S.C.

[footnote continued]

> one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

42 U.S.C. §3602(d). This definition appears to be all-inclusive (*see United States v. City of Parma*, P.H.E.O.H. Rptr. ¶13,616 (N.D. Ohio Sept. 5, 1973)) and these petitioners have alleged injury in fact just as surely as those in *Trafficante* who claimed the loss of associational benefits.

It appears to be immaterial whether petitioner Metro-Act, as a "private attorney general," is deemed to have standing because its members who live in Penfield are "aggrieved" by the deprivation of "interracial associations," or whether it is "aggrieved" by the fact that some of its non-Penfield members who seek housing in Penfield are the objects of respondents' discriminatory activities.[15] And it would also seem that Congress' inclusion of a broad range of non-individuals in the definition of "person," coupled with Metro-Act's vital interest in open housing and the refusal of Penfield to consider a Metro-

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§3610(a), was based on 42 U.S.C. §3610(d); whereas jurisdiction in the instant case is based on 42 U.S.C. §3612, since no administrative complaint was filed. The allegations here, which are concerned with an ongoing course of discriminatory conduct (*cf. Baker v. F. & F. Investment Corp.*, 420 F.2d 1191, 1200 (7th Cir. 1970)), are clearly timely filed under §3612. The absence of any reference in §3612(a) to the party who may sue, merely serves to demonstrate that the "person aggrieved" definition of §3610(a) applies to §3612 cases as well.

[15] The court of appeals considered *Trafficante* in connection with Metro-Act, but held it inapplicable. (Pet. App. A. at 13). The court also denied representative standing to Metro-Act because of its earlier determination that non-white petitioners lack standing. (Pet. App. A. at 12).

Act low-income housing proposal, are sufficient to give Metro-Act "person aggrieved" standing under the broad provisions of Title VIII. *Cf. Sierra Club v. Morton*, 405 U.S. 727 (1972); *United States v. SCRAP*, 412 U.S. 669 (1973). Petitioners Home Builders and Housing Council are on even stronger ground, as some of their members have suffered actual economic loss.

Most conclusive on the Title VIII standing status of all three organizational petitioners, however, is Congress' explicit intent to encourage all "persons," including corporations, associations, and the like, to become private-attorney-general participants in converting the statutory promises into reality—i.e., "to provide, within constitutional limitations, for fair housing throughout the United States." §801, 42 U.S.C. §3601. The organizational petitioners are so acting; therefore, by statutory definition as "persons" who are protected by Title VIII, they have standing to sue thereunder.[16]

In view of petitioners' standing under Title VIII, the need for this Court to determine independently their standing to present the other federal statutory and con-

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[16] Furthermore, as added encouragement to such participation, Congress in §817 has made it unlawful "to coerce, intimidate, threaten, or interfere with any person . . . on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right guaranteed or protected by" Title VIII. 42 U.S.C. §3617. The organizational petitioners, through their various efforts to construct housing in Penfield for lower-income individuals and to get Penfield to modify its policies, have "aided or encouraged" non-white petitioners and others in the attempted exercise of rights secured by Title VIII. In addition, petitioner Home Builders alleges that Penfield officials have threatened retaliatory action against it and its members for becoming involved in this litigation. This petitioner has thus stated a basis for jurisdiction directly under §817: "This section may be enforced by appropriate civil action."

stitutional claims is eliminated. All of petitioners' claims arise out of the same factual context and constitute a single case, *see Hagans v. Lavine*, 415 U.S. 528 (1974). If they have standing to litigate one of their statutory claims, judicial economy and fairness mandate trial of the entire case.

Should the Court nevertheless decide to reach the question left open in *Trafficante* (409 U.S. at 209n.8), we present the following alternative argument.

II.

THE POST-CIVIL WAR CIVIL RIGHTS LEGISLATION IS DESIGNED, AT A MINIMUM, TO ERADICATE, THROUGH THE FEDERAL COURTS, STATE-SUPPORTED RACIAL DISCRIMINATION WHEREVER AND HOWEVER IT MAY OCCUR; STANDING TO SUE UNDER THESE STATUTES MUST BE LIBERALLY CONFERRED WITHIN THE CONFINES OF ARTICLE III; PETITIONERS HAVE STANDING TO SUE UNDER THESE STATUTES.

A. 42 U.S.C. §§1981, 1982 and 1983, and 28 U.S.C. §§1331 and 1343, are Broad and Inclusive as to Petitioners' Racial Discrimination Claims.

42 U.S.C. §§1981 and 1982 have their origins in §1 of the Civil Rights Act of 1866 (enacted pursuant to the Thirteenth Amendment), which "was cast in sweeping terms." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 422 (1968). *See also Tillman v. Wheaton-Haven Recreation Ass'n, Inc.*, 410 U.S. 431, 439n.11 (1973). §§1981 and 1982 guarantee to all persons and citizens "the same right in every state and territory to," among other things, "make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property," and "to inherit, purchase, lease, sell, hold

and convey real and personal property," "as is enjoyed by white citizens." The intended breadth of these statutes is revealed by the legislative history of the 1866 Civil Rights Act which is catalogued in this Court's opinion in *Jones v. Alfred H. Mayer Co., supra*, holding that "§1982 bars *all* racial discrimination, private as well as public, in the sale or rental of housing. . . ." 392 U.S. at 413. §1 of the 1866 Civil Rights Act "was meant to prohibit all racially motivated deprivations of the rights enumerated in the statute. . . ." *Id.* at 426. And, although "its language was far broader than would have been necessary to strike down discriminatory statutes" (*Id.* at 426-427), §1982 was also intended to deal with "the existence of laws virtually prohibiting Negroes from owning or renting property in certain towns. . . ." *Id.* at 428.[17] It was designed to secure "the right to acquire property" (*Id.* at 432),[18] and its guarantees are violated "when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin. . . ." *Id.* at 442-43. It promises "the right to live wherever a white man can live" (*Id.* at 443), and its application is universal. *District of Columbia v. Carter*, 409 U.S. 418, 422 (1973). §1981, having the same origins, has a similar sweep. *Tillman v. Wheaton-Haven Recreation Ass'n, supra*, 410 U.S. at 440-41.

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[17] The Court observed that "opponents of the bill [1868 Act] charged that it would not only regulate state laws but would directly 'determine the persons who [would] enjoy . . . property within the States,' threatening the ability of white citizens 'to determine who [would] be members of [their] communit[ies]. . . .' " 392 U.S. at 433.

[18] *Accord, Tillman v. Wheaton-Haven Recreation Ass'n, supra*, 410 U.S. at 537; *Lynch v. Household Finance Corp.*, 405 U.S. 538, 544 (1972). The Fourteenth Amendment also protects, against state action, "the rights to acquire, enjoy, own and dispose of property." *Shelley v. Kraemer*, 334 U.S. 1, 10 (1948); *Buchanan v. Warley*, 245 U.S. 60, 74 (1917).

Jurisdiction to enforce the provisions of §§ 1981 and 1982 is broadly conferred upon the district courts; they are mandated to entertain civil actions "authorized by law to be commenced by any person" suffering deprivations.[19]

Similarly, 42 U.S.C. § 1983 and its jurisdictional counterpart, 28 U.S.C. § 1343(3), initially passed pursuant to the Fourteenth Amendment in the post-Civil War era as part of § 1 of the Civil Rights Act of 1871, while limited by the "state action" concept,[20] is also to be accorded a sweep as broad as its language. With particular relevance to the instant case, this Court has concluded, in *Lynch v. Household Financo Corp.*, 405 U.S. 538, 543 (1972), that

> the Congress that enacted the predecessor of §§ 1983 and 1343(3) seems clearly to have intended to provide a federal judicial forum for the redress of wrongful deprivations of property by persons acting under color of state law.

See generally, Steffel v. Thompson, 415 U.S. 452 (1974); *District of Columbia v. Carter, supra; Mitchum v. Foster*, 407 U.S. 225 (1972); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *Zwickler v. Koota*, 389 U.S. 241 (1967); *Blue v. Craig*, ____F.2d ____(4th Cir. 1974). *Cf. Griffin v. Breckenridge*, 403 U.S. 88 (1971).

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[19] 28 U.S.C. §1343 and subsections (3) and (4), 28 U.S.C. §1331(a) also confers jurisdiction for claims under §§ 1981 and 1982, although a jurisdictional amount ($10,000) must be pleaded, as it is in the instant case.

[20] And even this limitation recognizes that "settled practices of state officials may, by imposing sanctions or withholding benefits, transform private predilections into compulsory rules of behavior no less than legislative pronouncements." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 168 (1970).

42 U.S.C. § 1983 authorizes "the party injured" to institute "an action at law, suit in equity, or other proper proceeding for redress" against "[e]very person who under color of [state law, custom or usage] . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws. . ." The section authorizes actions against state officers to secure the Fourteenth Amendment right to acquire and enjoy property free of discrimination (*see* n.18, *supra*). § 1983 and its jurisdictional twin, 28 U.S.C. § 1343(3), were the product of "[a] pervasive sense of nationalism"[21] and were part of the post-Civil War "congressional investiture of the federal judiciary with enormously increased powers."[22]

This vast broadening of federal court jurisdiction came to a head with passage of the Act of March 3, 1875 (now 28 U.S.C. § 1331),[23] whereby

> Congress conferred upon the lower federal courts, for but the second time in their nearly century-old history, general federal-question jurisdiction subject

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[21] *Steffel v. Thompson, supra*, 415 U.S. at 463.

[22] *Zwickler v. Koota, supra*, 389 U.S. at 246. *See also District of Columbia v. Carter, supra*, 409 U.S. at 427. §§ 1983 and 1343(3) were "modeled" after § 2 of the Civil Rights Act of 1866. *Mitchum v. Foster, supra*, 407 U.S. at 238; *Lynch v. Household Finance Corp., supra*, 405 U.S. at 545n.9.

[23] 28 U.S.C. § 1331(a) gives the district courts jurisdiction of "*all* civil actions" arising "under the Constitution, laws, or treaties of the United States," where the value of the controversy, exclusive of interest or costs, is greater than $10,000. Petitioners' racial discrimination claims in the instant case "arise under" the Fourteenth Amendment, and they have alleged the requisite jurisdictional amount.

> only to a jurisdictional-amount requirement, see 28 U.S.C. §1331. With this latter enactment, the lower federal courts "ceased to be restricted tribunals of fair dealing between citizens of different states and became the *primary* and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States." Frankfurter & Landis, The Business of the Supreme Court 65 (1928) (emphasis added).

Steffel v. Thompson, supra, 415 U.S. at 464. *See also Zwickler v. Koota, supra,* 389 U.S. at 246-47. The Court has noted "that a broad grant of jurisdiction was intended" (*id.* at n.8), and that the statute "has been regarded as the 'culmination of a movement . . . to strengthen the Federal Government against the states.' " *Lynch v. Household Finance Corp., supra,* 405 U.S. at 548 n.14.[24]

Collectively and individually, therefore, 42 U.S.C. §§1981, 1982, 1983 and 28 U.S.C. §§1331, 1343, as consistently construed by this Court and as confirmed by history, confer broad civil rights and seek to open the federal courthouse door virtually as wide as Article III permits. In particular, the legislation is designed to insure "the rights of Negroes to attack state-sanctioned segregation through the peaceful channels of the judicial process." *Palmer v. Thompson,* 403 U.S. 217, 268 (1971) (White, J., dissenting on other grounds).

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[24] The court stated in *Lynch* (405 U.S. at 548) (emphasis added):

> The 1875 Act giving the federal courts power to hear suits arising under Art. III, §2 of the Constitution was, like the Act of 1871, an *expansion* of national authority over matters that, before the Civil War, had been left to the States. . . . The Act, therefore, is "clearly . . . part of, rather than an exception to, the trend of Legislation which preceded it."

B. Standing of Affected Persons and Organizations to Present Statutory and Constitutional Claims of Racial Discrimination Should be Liberally Conferred.

As the Court observed in *Linda R.S. v. Richard D.,* 410 U.S. 614, 617n.3 (1973) and repeated in *O'Shea v. Littleton,* 414 U.S. 488, 493n.2 (1974):

> Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute. See, *e.g., Trafficante v. Metropolitan Life Ins. Co.,* 409 U.S. 205, 212 (1972) (White, J., concurring); *Hardin v. Kentucky Utilities Co.,* 390 U.S. 1, 6 (1968).

See also Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 154 (1970). Congress cannot, of course, exceed the limitations of Article III,[25] but where the Court has read congressional purpose as intending to provide broadly for judicial review, it has liberally accorded standing to those alleging some actual

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[25] As the Court stated in *O'Shea* (414 U.S. at 493-94n.2):

> But such statutes do not purport to bestow the right to sue in the absence of any indication that invasion of the statutory right has occured or is likely to occur. 42 U.S.C. §1983, in particular, provides for liability to the "party injured" in an action at law, suit in equity, or other proper proceeding for redress. Perforce, the constitutional requirement of an actual case or controversy remains. Respondents still must show actual or threatened injury of some kind to establish standing in the constitutional sense.

We do not of course, suggest that §1983 or any of the other statutes under discussion permit the Court to ignore the case-or-controversy requirement.

or potential "injury in fact" and making claims "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Id.* at 152 and 153. Accordingly, the Court has generously defined standing under Title VIII of the Civil Rights Act of 1968 (*see* part IC, *supra*). And it has given broad standing status to those seeking judicial review of federal agency action under § 10 of the Administrative Procedure Act, 5 U.S.C. § 702. *United States v. SCRAP,* 412 U.S. 669 (1973); *Barlow v. Collins,* 397 U.S. 159 (1970); *Association of Data Processing Service Organizations, Inc. v. Camp,* 397 U.S. 150 (1970). *Cf. Sierra Club v. Morton,* 405 U.S. 727 (1972).

As demonstrated above in Part IIA, the civil rights legislation under which petitioners are proceeding reflects this Nation's longstanding, albeit tortured and unrealized, commitment to racial equality in all aspects of daily life. More important for present purposes, the legislation is a command to the federal judiciary to hear and dispose of civil rights claims on their merits. The interests asserted by petitioners here are surely as important as those concerns which received this Court's respect in *SCRAP, Barlow, Data Processing* and *Sierra Club.* The Court's own decisions are proof of that. *Tillman v. Wheaton-Haven Recreation Ass'n, supra; Sullivan v. Little Hunting Park,* 396 U.S. 229 (1969); *Jones v. Alfred H. Mayer Co., supra; Barrows v. Jackson,* 346 U.S. 249 (1953); *Hurd v. Hodge,* 334 U.S. 24 (1948); *Shelley v. Kraemer,* 334 U.S. 1 (1948); *Buchanan v. Warley,* 245 U.S. 60 (1917). The right to acquire, enjoy and dispose of property without discrimination based on race has been deemed of such importance, in fact, that in each of the last-cited cases, except *Jones* and *Shelley,* persons other than those who were the objects of discrimination

were allowed to assert the right. The right has been treated, as it must again be, as paramount. "[R]ule[s] of practice," such as standing (*Barrows v. Jackson, supra,* 346 U.S. at 257), must accommodate.

1. Non-White Petitioners

Non-White petitioners effectively allege that respondents, by policy and practice, have created "a device functionally comparable to a racially restrictive convenant . . ."[26] which "herds men into ghettos and makes their ability to buy property turn on the color of their skin. . . ."[27] They allege not that respondents have only zoned certain residential areas within Penfield for whites only *(cf. Buchanan v. Warley, supra)*, or that they have merely imposed a majority-consent requirement on residence by non-whites. *Cf. Harmon v. Tyler,* 273 U.S. 668 (1927). Their claim is that respondents have effectively zoned the entire Town of Penfield for white-only occupancy (*cf. Gomillion v. Lightfoot,* 364 U.S. 339 (1960)), thereby excluding petitioners and confining them to the economic, social and human degradation of the ghetto.

The court of appeals overlooks the essence of these allegations, criticizes petitioners for not having "any interest in land within the town or any connection with any plan to construct housing for them within the town" (Pet. App.A at 8), and, incredibly, concludes that petitioners "indicate no benefit which a judgment favorable to them would produce." (Pet. App.A at 10).[28] Seem-

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[26] *Sullivan v. Little Hunring Park, supra,* 396 U.S. at 236.

[27] *Jones v. Alfred H. Mayer Co., supra,* 392 U.S. at 443.

[28] This latter conclusion was reached, in part, through the court of appeals' construction of the prayer for relief contained in petitioners' complaint (Pet. App. A at 11), overlooking the

[footnote continued]

ingly contrary decisions[29] were distinguished on the ground that the disputes in those cases focused "on a particular project [which] assures 'concrete adverseness.' " (Pet. App.A at 9 and 10).

We are aware of no decision of this Court which would define "concrete adverseness" in terms of the possibility that someone is actually prepared to pour a foundation as soon as the way is judicially cleared. We simply do not comprehend how the vindication of Thirteenth and Fourteenth Amendment constitutional and statutory rights can be made to turn upon the availability of builders or developers or real estate brokers. For one thing, the racism under attack may be so pervasive that such third parties are unwilling, for whatever reasons, to enter the fray. *See, e.g., Williams v. Matthews Co.*, 499 F.2d 819 (8th Cir.), *cert. denied*, 43 U.S.L.W. 3295 and 3296 (1974). Even less, then, do we see how the victims of discrimination can be required to have a "connection" with such frequently-unavailable persons and corporations, or how an "interest in land" can be prerequisite to the right to challenge race-based denials of such an interest.

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relief requested in the proposed complaint-in-intervention of petitioner Home Builders (see A. 160-63). This inquiry, in our view, is inappropriate insofar as it relates to the standing issues (*see Baker v. Carr, supra*, 392 U.S. at 208), although it may have its place, in other contexts, in connection with other concerns of equity jurisprudence. *See O'Shea v. Littleton, supra*, 414 U.S. at 499-504. But even if the inquiry were appropriate, the court of appeals' approach is too wooden. By the very nature of justice, federal courts of equity are neither bound by the extent of, nor confined to, the particular relief requested at the pleading stage. *See* Rule 54(c), Fed. R. Civ. P.; *cf.* Rule 57, Fed. R. Civ. P.

[29] E.g., *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972); *Dailey v. City of Lawton*, 425 F.2d 1037 (10th Cir. 1970).

In any event, the record here is replete with allegations that various persons and organizations have attempted and are prepared to construct housing in Penfield within petitioners' means. Petitioners allege that they have sought and continue to desire such housing, which has been denied to them because of illegal discrimination. No decision of this Court to date deprives them of the right to have such claims adjudicated on the merits. Only by " 'seek[ing] ingenious analytical instruments' to avoid giving . . . congressional enactment[s] the broad scope [their] language and origins may require"[30] can such a result now be reached. More ominously, such a result, by denying standing to the objects of discrimination, would encourage suburban radial discrimination to perfect itself in the comforting hope that not even third parties will bother with the steps necessary for standing to sue.

The court below thus erects a wholly new and regressive degree-of-discrimination test for standing which circumvents the jurisdictional mandates of Congress and serves no policy embodied in Article III. If the court of appeals has its way, only those individuals who have been wrongly excluded from a particular construction project actually under consideration by a suburban jurisdiction have standing to challenge their exclusion – and then only if they have some sort of "connection" with the project. Such a test invites municipalities to discriminate totally, to refuse even to consider alternative courses of conduct; for such a test permits judicial review only of certain isolated acts of discrimination while foreclosing judicial review of more effective discriminatory patterns and practices. Much discrimination results in little standing. The Rule of Law is turned on its head.

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[30] *District of Columbia v. Carter, supra*, 409 U.S. at 432.

2. Organizational Petitioners

As we read *Sierra Club v. Morton* and *United States v. SCRAP*, the organizational petitioners quite clearly have both individual and representative standing, a contention which no doubt will be thoroughly briefed by the parties. The burden of our argument here is that these petitioners should be accorded standing on the more traditional grounds[31] of *NAACP v. Button*, 371 U.S. 415, 428-29 (1963) and *NAACP v. Alabama*, 357 U.S. 449, 458-60 (1958): as advocates and implementers of national housing policies which are embodied in the Constitution and federal laws, and as representatives of their members who may not otherwise be able to protect their own rights.

The court of appeals rejected such standing because it found the "special circumstances" present in the *NAACP* cases absent here. Although we do not perceive any meaningful differences between the standing of a union to assert the First Amendment rights of its members (*Allee v. Medrano*, 94 S. Ct. 2191, 2202n.13 (1974); *id.* at 2207 (Burger, C.J., concurring and dissenting)) and that of organizational petitioners to assert the Thirteenth and Fourteenth Amendment constitutional and statutory rights of their members, these kinds of cases do present "special circumstances" (if that is indeed the rule). The status of these petitioners is not unlike that of the NAACP in *Button:*

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[31] We say "on the more traditional grounds" in order to take into account any distinctions which the presence of the Administrative Procedure Act in *Sierra Club* and *SCRAP* might be thought to present in connection with organizational standing questions. We do not see any such distinctions, however, and our view that the civil rights enactments involved here call for equally broad standing rules applies to organizations as well as to individuals.

> litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government . . . for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts.

371 U.S. at 430. Some of the petitioners' motives may be only indirectly related to minority rights, and their interests may be substantively broader and, at the same time, geographically smaller in scope, but, having failed in their political efforts to make Penfield more receptive to housing for minority-race persons, they should not have found the courthouse door locked. We do not argue that *Button* is a perfect analogy, but the Thirteenth and Fourteenth Amendment rights which these petitioners either advocate or seek to implement should be given equivalent status. Therefore, "[w]e think petitioner[s] may assert this right on [their] own behalf, because, though a corporation, [they are] directly engaged in those activities, claimed to be constitutionally protected, which . . . [respondents' activities] would curtail." *Id.* at 428.

In addition, they should be recognized as representatives of their members whose constitutional rights "could not [or may not] be effectively vindicated except through an appropriate representative before the Court." *NAACP v. Alabama, supra*, 357 U.S. at 459. The court of appeals could see "no reason why Penfield Better Homes cannot assert its own rights as well as or better than Housing Council" (Pet. App.A at 15). But that view of the record overlooks Home Builders' allegations that it has received threats of retaliation against it and its members. More-

over, it places no strain on the imagination to envision the reluctance of individual builders to propose housing for minorities in white suburbia. *See, e.g., Williams v. Matthews Co.*, 499 F.2d 819 (8th Cir.), *cert. denied*, 43 U.S.L.W. 3295 and 3296 (1974). Such reluctance may dissipate, in some situations, under the protective umbrella of a multi-member organization. In light of these realities, representative organizations such as these petitioners should be allowed to join in or initiate challenges to alleged racially exclusionary zoning practices, so that their members might have the Law's protection while they seek to secure its goals.

III.

THE TAXPAYER-STANDING ISSUES NEED NOT BE DECIDED

If the non-white and organizational petitioners (or either) are found to have standing, litigation of their claims on the merits will necessarily serve to protect all interests asserted by the taxpayer petitioners. In such circumstances the Court has frequently declined to decide difficult standing questions. *See, e.g., California Bankers Ass'n v. Shultz*, 416 U.S. 21, 44-45 (1974); *Doe v. Bolton*, 410 U.S. 179, 189 (1973). Such a result should obtain here.

CONCLUSION

The judgment below should be reversed and the case remanded to the court of appeals for further appropriate proceedings.

Respectfully submitted,

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